TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 638. 130

KEOKUK & HAMILTON BRIDGE COMPANY, APPELLANT,

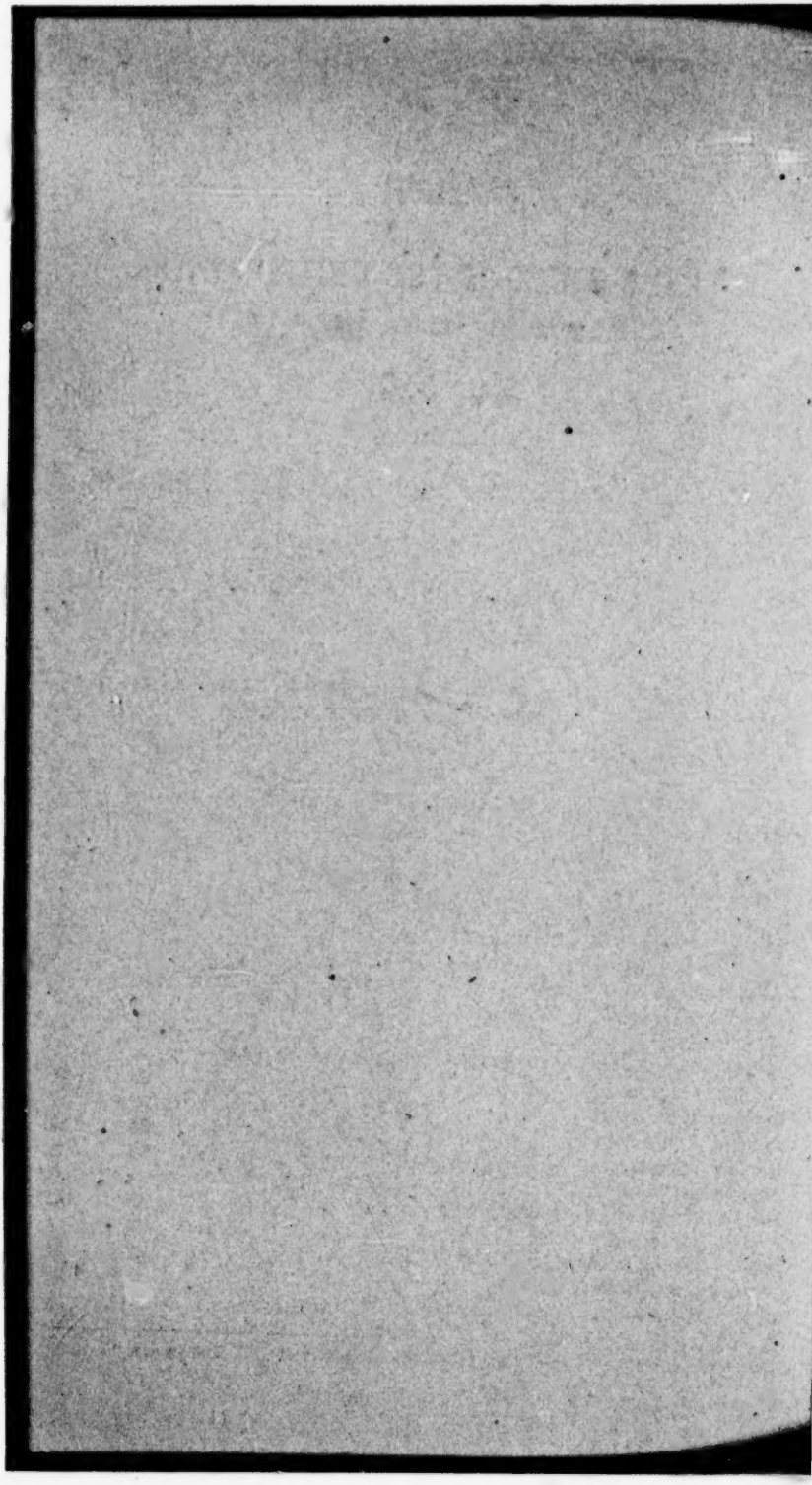
vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED AUGUST 23, 1920.

(27,869)



(27,869)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

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KEOKUK & HAMILTON BRIDGE COMPANY, APPELLANT,

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FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 17, 1920.

1 Pleas in the District Court of the United States of America within and for the Southern Division of the Southern District of Illinois, held at the City of Springfield, within said division and district, before the Honorable Louis Fitzhenry, Judge of said court, on Saturday, the 26th day of June, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-fourth.

2 In Equity.

No. 87.

KEOKUK & HAMILTON BRIDGE COMPANY, Complainant,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. Williams, J. H. Helms, and Chas. S. Tyler, Defendants.

Be it remembered that heretofore to wit: On the 12th day of March in the year of our Lord one thousand nine hundred and nineteen, that being one of the days of the January Term A. D. 1919, of the District Court of the United States for the Southern Division of the Southern District of Illinois, came the complainant in the above entitled cause by its solicitors and filed a bill of complaint, which said bill of complaint, was and is in the words and figures, following, to wit:

3 In the District Court of the United States for the Southern Division of the Southern District of Illinois.

In Equity.

KEOKUK & HAMILTON BRIDGE COMPANY, Complainant,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. Williams, J. H. Helms, and Chas. S. Tyler, Defendants.

To the Judges of the District Court of the United States for the Southern Division of the Southern District of Illinois:

Your Orator, the Keokuk & Hamilton Bridge Company, a corporation, brings this its bill of complaint against Fred Salm, Jr., County Treasurer and Ex Officio Collector of Hancock County, Illinois; Elmer F. Dennis, Local Assessor; William E. Miller, County Clerk; Arch C. Williams, J. H. Helms and Charles S. Tyler, Board of Review, all in said County and State.

The complainant and defendants are citizens of the State of Illinois but complainant claims that the matters and things in this bill of complaint involve the Constitution and Laws of the United States and the amount in controversy exceeds, exclusive of interest and costs, the sum or amount of three thousand dollars and your Orator represents and shows to your Honors;

That the complainant, Keokuk & Hamilton Bridge Company is a corporation formed by consolidation of the Hancock County Bridge Company organized under a special act of the Legislature of the State of Illinois, approved February 13th, 1865, and said act was public act.

4 That there also existed prior to 1868 a corporation known as the Keokuk & Hamilton Mississippi Bridge Company, organized and existing under the general laws of the State of Iowa. That by the terms of these corporate acts or charters the respective companies had authority to consolidate their rights, privileges and immunities forming a third or new corporation and said corporations did so consolidate and form such third corporation by the name of the Keokuk & Hamilton Bridge Company, the complainant herein.

That thereafter in pursuance of the powers thus conferred and under authority of an act of Congress passed July 25th, 1866, said corporation began and constructed in the years about 1868 and 1869 the Keokuk & Hamilton Bridge, and that said Bridge was constructed for the principle purpose and use for the passage of railroad trains and said Bridge Company became a Railroad Company and its said Bridge a railroad.

That said bridge was so built across the Mississippi River between the towns or cities of Keokuk, Iowa, and Hamilton, Illinois, and that said bridge had a railroad track across the same which extended from the lands East of the Mississippi River by approaches to connections with certain railroads connecting therewith and extending eastward through the State of Illinois and westward by approaches from the westerly end of said bridge over the lands in the State of Iowa to connections with railroads terminating or extending further westward through the State of Iowa so that when said bridge was completed and put in operation it was a railroad forming a connecting link between the railroads in Illinois and Iowa and thereafter when so completed railroad trains began to pass over said line of railway and over said bridge and its railroad track to and from the places hereinafter set forth.

5 Your Orators further show unto your Honors that the defendants in their individual as well as official characters, have proceeded in times and manner, as they claim, prescribed by the laws of the State of Illinois, to assess your Orators' property as hereinafter described by metes and bounds as hereinafter set forth, whereas in truth and in fact your Orators' property is not lands but a railroad track and railroad property.

That defendants have assessed said property for the alleged taxes against the same for the year 1918 at and for the sum of five thousand, seven hundred, seventy dollars and are now and have been so proceeding to complete said assessment and taxation for said year

to the end that the said amount so taxed can be made a charge and lien upon said property and said property sold to satisfy said taxes, all of which to the great and irreparable injury of complainant and in violation of its rights and property under the provision of the Constitution and laws as will more fully and at large hereinafter appear.

The property alleged to be assessed and so taxed against your Orator is described as follows:

The Hancock County Bridge Co., called the Keokuk Bridge Co. also called the Keokuk & Hamilton Bridge Co., all of the land of the Keokuk & Hamilton Bridge Co., situated in Hancock County, Illinois and lying and being in and on Island No. 4 in the S. W. Quarter of Section (30) Thirty in Township Five (5) North Range Eight (8) West in said County and extending (westerly) into the Mississippi River to the state line between the States of Illinois and Iowa and more particularly described as follows: to-wit: A strip of land 80 ft. wide more or less the center line of said strip of land commencing at a point in the center of the railroad avenue in a plat of ground known as the Keokuk and Hamilton Ferry and Manufacturing Cos., add. to the City of Hamilton in said County

6 707¾ ft. South 72 degrees 40′ E. of the Center of the E. end of said Bridge, thence running North 72 degrees 40′ west to the east end of said bridge, thence continuing the same course along the center line of said Bridge 1.567 ft. to the state line between the state of Illinois and Iowa including the slopes, walls and embankments, abutments, piers and bridge structure and improvements thereon S. E. 30, 5, 8, giving the final equalized assessed value of all lands for taxation as $100,000. This taxable value under the laws of the state of Illinois being supposed to be one third of the total value of all of said property, which is three times said amount or $300,000 total assessment.

7 Your Orator further shows unto your Honors, that the defendants as individuals and in their official capacities have assessed your Orator's property as alleged on a basis of about 150 per cent valuation, whereas in truth and in fact the defendants as individuals and assessors of this County and State arbitrarily, intentionally and systematically as shown, assessed the property of individuals and of corporations within the sphere of duty at a total taxable value of said property of forty per cent of its fair cash value: That the fact that such systematic assessment upon said basis annually for many years past has been a matter of public notoriety in the state.

Your Orator further shows that under the laws and Constitution of the State of Illinois all property real and personal must and shall be uniformly assessed at such fair and equal valuations, that the defendants by their acts as individuals and official capacity *as* herein assessing and seeking to collect taxes against your orator on this unfair, unequal and discriminatory valuation and in defiance of the Constitution and laws of said state and denying to your Orator*s* the equal protection of the laws and seeking to take Orator's property without due process of law within the meaning of the 14th Amendment to the Constitution of the United States.

8 Your Orator further shows that it is the owner of about fifteen or sixteen hundred feet of railroad track in said County and State, in fact said railroad track is the main thing of value which defendants assessed as lands and your Orator avers that under the laws of the State of Illinois said railroad track can only be assessed by the State Board of Equalization and the said County assessors have no jurisdiction whatever to assess said railroad track for any purpose; and your Orator further shows unto your Honors that defendants have so assessed complainants' said property, arbitrarily, systematically and intentionally at over one hundred per cent of its said actual value.

Whereas defendants have intentionally, systematically and persistently assessed other classes of property of similar character and value at about forty per cent of such fair cash value and thereby is and has deprived complainant of the equal protection of the laws and taking complainant's property without due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

That unless restrained and enjoined by this Honorable Court the defendants will individually and as such officials proceed in every way to becloud by judgment or otherwise complainant's said property and will cause judgments to be entered upon said alleged delinquent list against complainant's said property and to have execution issued and complainant's property sold at execution to satisfy such illegal and vaid taxes and in all these and other ways irreparably injure and destroy complainant's Bridge and railroad track and property.

9 Wherefore complainant prays that the defendants and each of them, whether as individuals or as officials, in said taxing matters, be enjoined and forever restrained from so doing; And your Orator further shows that since the acts and doings of defendants are now going on and will result in the wrongful acts herein complained of before this litigation may terminate, your Orator prays that an injunction pendente lite — herein, and such other relief as the equities of the case may require.

To the end therefore that the defendants may show if they can, why your Orator, complainant herein, should not have relief herein prayed for, and may make true and perfect answers accordingly to the best of their respective knowledges and belief to the several matters herein set forth the same as if they would specifically here repeat, but not under oath, answer under oath being waived.

May it please your Honors to grant to your Orators a writ of Subpœna and respondendem, issuing out of and under the seal of this Honorable Court to the said defendants and each of them, as such defendants commanding them and each of them to be and appear and make answer under this bill of complaint and to perform and abide by such order and decree or decrees as the Court may see fit in equity and good conscience to decree herein.

DAVID E. MACK,
Solicitor for Complainant.

F. T. HUGHES,
Of Counsel.

10 STATE OF IOWA,
Lee County, ss:

John H. Cole, herein, being duly sworn deposes and says that he is General Manager of the complainant herein, The Keokuk & Hamilton Bridge Company, that he has read the said bill of complaint and nows the contents thereof; and the same is true as to the matters therein said to be alleged upon information and belief and that as to these matters he believes them to be true.

J. H. COLE.

STATE OF IOWA,
Lee County, ss:

Subscribed and sworn to before me, the undersigned notary public in and for the County and State aforesaid this 8th day of March, 1919.

[Notarial Seal.] F. T. HUGHES,
Notary Public.

My commission expires July 4, 1919.

Indorsed: Filed Mar. 12, 1919. R. C. Brown, Clerk.

11 And afterwards, to wit: on the 12th day of March A. D. 1919, there was issued by the Clerk of said Court, a writ of Chancery Subpœna herein, which said Writ of Chancery Subpœna, together with the Marshal's return thereon, was and is is the words and figures, followuig, to wit:

12 UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division, ss:

The United States of America to Fred Salm, Jr., county treasurer and ex officio collector of Hancock County, Illinois; Elmer F. Dennis, local assessor; William E. Miller, county clerk; Arch C. Williams, J. H. Helms, and Charles S. Tyler, board of review, all of Hancock County, Illinois, Greeting:

We Command you and every of you, That you appear before our Judge of our District Court of the United States of America, for the Southern District of Illinois, at Springfield, in said District, on the 1st day of April, A. D. 1919, at 9 o'clock A. M. to answer the complainant's bill of complaint of Keokuk & Hamilton Bridge Company, a corporation, this day filed in the office of the Clerk of said Court in the City of Springfield, then and there to receive and to abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal/ of the Southern District of Illinois to Execute.

Witness the Honorable Louis Fitz-Henry Judge of the District Court of the United States for the Southern District of Illinois, at Springfield, aforesaid, this 12th day of March in the year of our Lord one thousand nine hundred and nineteen and of our Independence the 143rd year.

[SEAL.]

R. C. BROWN,
Clerk.

Memorandum.

The above named defendants are notified that unless they and each of them shall file their answer or other defense in the office of the Clerk of said Court, at Springfield, aforesaid, on or before the 20th day after service of this process, excluding the day of such service, the bill of complaint filed herein will be taken against them as confessed, and a decree entered accordingly.

[SEAL.]

R. C. BROWN,
Clerk.

13 UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division, ss:

I have duly executed the within writ by reading the same and delivering a true copy thereof to Mrs. Myrtle Salm, wife of and an adult member of the family of the within named Fred Salm, Jr.; to the within named William E. Miller, County Clerk; to Mrs. Daisy Helms, wife of and an adult member of the family of the within named J. H. Helms; to Mrs. Cleo Tyler, wife of and an adult member of the family of the within named Chas. S. Tyler and to the within named Arch C. Williams at Carthage, Hancock County, Illinois, and by reading the same and delivering a true copy thereof to Martha E. Dennis, wife of and an adult member of the family of Elmer E. Dennis at Hamilton, Hancock County, Illinois. All done this 14th day of March A. D. 1919.

V. Y. DALLMAN,
U. S. Marshal.
By J. E. DRESSENDORFER,
Deputy.

Marshal's fees $23.54.

The within named Fred Salm, Jr., Elmer F. Dennis; J. H. Helms and Chas. S. Tyler not found in this district.

Indorsed: Filed Mar. 17, 1919. R. C. Brown, clerk.

14 And afterwards, to wit: on the 1st day of April A. D. 1919, there was filed in the office of the Clerk of said Court, a certain motion to dismiss, which said motion to dismiss was and is in the words and figures, following, to wit:

STATE OF ILLINOIS,
County of Hancock, ss:

In the District Court of the United States for the Southern Division of the Southern District of Illinois.

In Equity.

KEOKUK & HAMILTON BRIDGE COMPANY, Complainant,

vs.

FRED SALM, ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. WILLIAMS, J. H. HELMS, and CHAS. S. TYLER, Defendants.

Motion to Dismiss.

Now comes all of the defendants in the above entitled action and move the Court to dismiss this action, and that it takes its costs in this suit incurred for the following reasons:

1. Because the plaintiff has a remedy at law and does not aver in the bill that it has exhausted said remedy.

2. Because the bill does not aver that the complainant has filed its objections in the County Court to the taxes, the collection of which is sought to be enjoined in this suit.

3. Because the bill does not aver that the plaintiff made complaint, as required by law, to the assessment of taxes complained of in this suit, to the Board of Review or to the local assessor.

4. Because no ground of equitable jurisdiction is sufficiently averred in the bill in this suit.

5. That there is insufficiency of fact to constitute a valid cause of action in equity against the defendant.

6. Because it is not averred in the bill that the property of plaintiff that is assessed is a part of a railroad system and that said railroad system is owned by the plaintiff.

7. Because it appears from the Statutes and decisions of the courts of the State of Illinois and of the United States that the plaintiff was properly assessed by the local assessor and the Board of Review.

8. Because the bill does not properly aver wherein the 14th amendment to the Federal Constitution is violated.

9. Because the decision of the Supreme Court of the State of Illinois and of the United States in the tax cases against this plaintiff bars the plaintiff from the relief sought in said bill and the position taken by the plaintiff in these cases estops it from urging this objection.

10. Because the bill does not aver fraud in the valuation of the property of plaintiff.

EARL WOOD,
Solicitor for Defendants.

Indorsed: Filed April 1, 1919. R. C. Brown, clerk.

16 And afterwards, to wit: on the 10th day of April A. D. 1919, the following further proceedings were had in said Court in said cause and were entered of record to wit:

In the District Court of the United States for the Southern District of Illinois, Southern Division.

In Equity.

No. 87.

KEOKUK & HAMILTON BRIDGE COMPANY, a Corp.,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. WILLIAMS, J. H. HELMS, and CHARLES S. TYLER.

Thursday, April 10th, 1919.

Court met pursuant to adjournment.
Present, the Honorable Louis Fitz Henry, Judge.
And now on this 10th day of April A. D. 1919 comes the complainant herein by Messrs. D. E. Mack and Felix T. Hughes, its solicitors and comes also defendants by Earl W. Wood, Esq., their solicitor and upon motion of the complainant by its solicitors, leave is granted the said complainant to file an amendment to the bill of complaint herein. And the Court after hearing the arguments of said solicitors on the motion of complainant for a temporary injunction and on the motion of defendants to dismiss the bill and amendment thereto, takes the same under advisement.

17 And afterwards, to wit: on the 10th day of April A. D. 1919, there was filed in the office of the Clerk of the District Court of the United States for the Southern District of Illinois, a certain Amendment to Bill of Complaint, which said Amendment to Bill of complaint, was and is in the words and figures, following, to wit:

18 In the District Court of the United States for the Southern Division of the Southern District of Illinois.

In Equity.

KEOKUK & HAMILTON BRIDGE COMPANY, Complainant,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM F. MILLER, ARCH C. WILLIAMS, J. H. HELMS, and CHAS. S. TYLER, Defendants.

Amendment to Bill of Complaint.

To the judges of the district court of the United States for the southern division of the southern district of Illinois:

Your Orator, The Keokuk & Hamilton Bridge Company, a corporation, brings this amendment to its bill of complaint against Fred Salm, Jr., County Treasurer and Ex-Officio Collector of Hancock County, Illinois; Elmer F. Dennis, Local Assessor; William E. Miller, County Clerk; Arch C. Williams, J. H. Helms, and Chas. S. Tyler, Board of Reviews, all in said County and State.

First. That by the laws of the State of Illinois taxes are assessed against the property and not against the owner and when so assessed became a lien and cloud upon complainant's title to said property and that the same is true in the case herein, and as complainant herein shows the taxes in the instant case are illegal and void this Honorable Court should take jurisdiction of this cause and cause said cloud upon complainant's title to be removed.

Second. That in the levy and collection of the taxes, as shown in complainant's bill of complaint herein, it becomes and is the duty of the collector, under the law of the State of Illinois, to pay the sum of the taxes so received in the proportion designated in his tax books, to the County Treasurer of the County of Hancock and other officials and authorities entitled to receive the same, and if defendants should institute suit to recover back, the taxes so paid, the complainant would be obliged to bring separate suits against each one of the several taxing bodies, receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and the proportion of the tax, which would go to the State of Illinois, could not be collected back by any legal proceedings whatsoever, and that by reason thereof, the
19 appellee, your Orator would be subject to great and irreparable injury for which there is no complete and adequate remedy at law.

Third. Your Orator further represents and shows unto your Honors, that your Orator's bridge and track as in its said bill of complaint herein shown, begins on the land in the State of Illinois and extends to the Mississippi river and across the same to the State

of Iowa and to a connection with the railroad in said State on the west side of the said river and bridge becomes and is a unit inseparable, and with a capital stock, covering the entire property, and to levy and sell that portion of said railroad track and bridge within the State of Illinois, would sever and destroy said bridge and railroad engaged in interstate commerce would do a great damage and injury to your Orator and the people of the United States, and would be denying to your Orator, the equal protection of the law and take your Orator's property without due process of law. All in violation of the Fourteenth Amendment of the Constitution of the United States.

Complainant reaffirming the matters and things in its original bill of complaint, herein prays for the same relief as in its original bill, it has so prayed, and such other relief as the equity of the case may require.

F. T. HUGHES,
D. E. MACK,
Complainant's Solicitors of Record.

F. T. HUGHES,
Of Counsel.

Verified.

Indorsed: Filed April 10th, 1919. R. C. Brown, clerk.

20 And afterwards, to wit: on the 26th day of June A. D. 1920, the following further proceedings were had in said Court in said cause and were entered of record to wit:

In the District Court of the United States for the Southern District of Illinois, Southern Division.

In Equity.

No. 87.

KEOKUK & HAMILTON BRIDGE CO.

vs.

FRED SALM, JR., et al.

Saturday, June 26th, 1920.

Court met pursuant to adjournment.

Present, the Honorable Louis Fitz Henry, Judge.

And now on this 26th day of June A. D. 1920, comes again the parties to this cause by their respective solicitors and the court having heretofore heard the arguments of said solicitors on the motion of the complainant for a preliminary injunction and on the motion of defendants to dismiss the bill of complaint herein and being now fully advised in the premises, it is ordered that the motion of the

complainant for a preliminary injunction herein, be, and the same is hereby denied, and that the motion of the defendants to dismiss the bill of complaint herein, be, and the same is hereby allowed. It is further ordered and adjudged by the Court that the defendants recover from the said complainant, their costs and charges about their defense in that behalf expended, and that execution issue therefor.

21 And afterwards, to wit: on the 26th day of June A. D. 1920, there was filed in the office of the Clerk of said Court by the Judge thereof, a memorandum of the views of the Court, which said memorandum of the Court's views was and is in the words and figures, following, to wit:

United States District Court, Southern District of Illinois, Southern Division.

In Equity.

No. 87.

KEOKUK & HAMILTON BRIDGE COMPANY

vs.

FRED SALM, JR., County Treasurer and ex Officio Collector of Hancock County et al.

Memorandum of Views of the Court.

Plaintiff is a corporation owning and operating a bridge across the Mississippi River from Hamilton, Illinois to Keokuk, Iowa, and seeks to enjoin the County Treasurer of Hancock County and others, both as individuals and taxing officers, from assessing a tax and enforcing the collection thereof against plaintiff's property. The reasons assigned are:

(1) That the defendants have proceeded, as they claim, under the laws of Illinois to assess plaintiff's property by metes and bounds, as real estate, when in fact its property is a railroad track and railroad property. The Bill describes the property of the plaintiff by metes and bounds, giving the equalized assessed value thereof for taxation as $100,000, being one-third of the fair cash value of said property, $300,000.

(2) That defendants have assessed plaintiff's property at about one hundred fifty per cent valuation, whereas, they have assessed property of individuals and corporations at forty per cent of its fair cash value; that by so doing defendants violate the Constitution of Illinois and the 14th Amendment of the Federal Constitution.

22 (3) That plaintiff's property should be assessed by the State Board of Equalization and not by the county assessors,

That unless restrained and enjoined, defendants will proceed in every way to becloud by judgment or otherwise, plaintiff's property and to enforce the collection of the said illegal and void taxes.

(4) That the injunction should be granted as prayed to avoid a multiplicity of suits, and the further fact that there is no plain, adequate and complete remedy at law, as a portion of the taxes never could be recovered by reason of it being distributed among the various taxing bodies.

Defendants move to dismiss the bill for the following reasons:

(1) The plaintiff has a remedy at law and does not aver it has exhausted such remedy.

(2) The bill does not aver that the plaintiff has filed its objection in the County Court to the taxes, the collection of which is sought to be enjoined.

(3) The plaintiff does not aver that it made complaint as required by law to the assessment of the taxes complained of to the Board of Review or legal assessor.

(4) No ground of equitable jurisdiction is sufficiently averred in the bill.

(5) That there is an insufficiency of fact to constitute a valid cause of action in equity against the defendants.

(6) It is not averred in the bill that plaintiff's property as assessed is a part of a railroad system and that said railroad system is owned by the plaintiff.

(7) It appears from the Statutes and decisions of the courts of the State of Illinois and the United States that the plaintiff was properly assessed by the local assessor and Board of Review.

23 (8) Because the bill does not properly aver wherein the 14th Amendment to the Federal Constitution is violated.

(9) Because the decisions of the Supreme Court of the State of Illinois and of the United States in the tax cases against the plaintiff bar the plaintiff from the relief sought in said bill and the position taken by the plaintiff in these cases estops it from urging this objection.

(10) The bill does not aver fraud in the valuation of plaintiff's property.

Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate and complete remedy at law may be had. Judicial Code, Sec. 267, U. S. Comp. Stat. Ann. 1916, par. 1244.

In the Federal Courts the distinction between law and equity is maintained, and remedies afforded by law and equity are separately pursued. Gibson v. Shoto, 13 Wall. 92, 102.

If there is a plain, adequate and complete remedy at law in this

case, then this Court is without jurisdiction and the motion to dismiss should be allowed.

Plaintiff, being a bridge company and the owner of a structure across a boundary stream, comes clearly within the purview of the Illinois Statute, entitled, "An Act to provide for the Assessment and Taxation of Bridges Across the Navigable Waters on the Borders of this State." Approved and in force May 1, 1873. Anderson v. C. B. & Q. R. Co. 117 Ill. 26; C. & A. R. Co. v. People 153 Ill. 409; People v. A. T. & S. F. R. Co. 206 id. 252; Keokuk & Hamilton Bridge Co. v. People 145 id., 596; Keokuk & Hamilton Bridge Co. v. People, 161 id. 132; Keokuk & Hamilton Bridge Co. v. People, 161 id. 514; (writ of error dismissed, 173 U. S. 702); Keokuk & Hamilton Bridge Co. v. People, 176 Ill. 267; People, ex rel. McAllister v. Keokuk & Hamilton Bridge Co., 287 id. 246.

24 That act provides that a bridge Company whose property is so circumstanced "shall be assessed by the township or other assessor in the county or township where the same is located, as real estate; and all provisions of law relating to the assessment and taxation of real estate, shall apply to the assessment and taxation of such bridges." The Statutes of Illinois give the owner of property the right to appeal to the assessor to have his property assessed properly for taxes. If dissatisfied with the assessment, the owner has a right then to appeal to the Board of Review. If any irregularities or illegalities creep into the assessment as made and equalized by the Board of Review, then the owner may resist a tax based upon the assessment on that ground when the county collector attempts to enforce the collection of the tax by seeking a judgment against the property and an order of sale for taxes from the county court of the county in which the real estate is located. At the hearing in the County Court upon this application for judgment, defendant is entitled to raise any meritorious objection which he may have to "any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of taxes, or any omission or defective act of any officer or officers connected with the assessment or leying of such taxes," and the court is vested with the discretion to correct, supply and make the proceedings conform to law or to compel the person (in the presence of the court) from whose neglect or default the irregularities, informalities or illegalities complained of, were occasioned to correct the same." Ill. Rev. Stat. Chap. 120, Sec. 191, 5J & A. Ill. Stat. Ann., Sec. 9410, pp. 5542.

Should the objector or property owner feel aggrieved at the judgment of the county court he is given the right by the Revenue Act of Illinois to appeal directly to the Supreme Court of Illinois, or to sue out a writ of error from said court and thereby have the

25 judgment of the county court and its ruling upon the objections aforesaid reviewed by the Supreme Court. Ill. Rev. Stat. Chap. 120, Sec. 192.

This latter statute provides, among other things, that the appeal or writ of error shall act as a supersedeas if the tax payer shall deposit with the county collector (county treasurer) an amount of

money equal to the amount of the judgment and costs. The statute further provides "If upon a final hearing judgment shall be refused for the sale of the lands or lots for the taxes or any part thereof, the collector shall pay over to the party who shall have made such deposit, or his legally authorized agent or representative, the amount of the deposit, or so much thereof as shall remain, for the satisfaction of the judgment against the premises in respect of which such deposits shall have been made." 5J & A. Ill. Stat. Ann., Sec. 9411, pp. 5554-5.

The litigation discussed in the opinion of the Supreme Court in People ex rel. McCallister, County Collector of Hancock County, v. Keokuk & Hamilton Bridge Co., 287 Ill., 246, was an appeal under Section 192, supra. The objections in the County Court involved substantially all of the questions raised by the bill of complaint in this case except the charge that the assessment of plaintiff's property is unfair, unequal and discriminatory in defiance of the Constitution and laws of said State and "denying to your orators the equal protection of the laws and seeking to take orator's property without due process of law within the meaning of the 14th Amendment to the Constitution of the United States," that it has no plain, adequate and complete remedy at law and that equity should intervene to avoid a multiplicity of suits. The objections, however, in the County Court of Hancock County charge that plaintiff's property "was arbitrarily, knowingly and fraudulently assessed at its full market or cash value while all other property was assessed at about forty per cent of its fair cash value and the assessment was approved by
26 the Board of Review." In plaintiff's bill the allegation is that plaintiff's property is "arbitrarily, systematically and intentionally" assessed at over one hundred per cent of its actual value.

In the McCallister case, supra, the Illinois Supreme Court said:

"An arbitrary, known and intentional violation of the rule of uniformity is an invasion of the constitutional right and will not be tolerated. It will be sufficient for an objector to show such willful and intentional violation of the constitutional provisions and where an assessment shows a very great disparity and discrimination, which could not reasonably have arisen from an error of judgment the courts will give relief. (Raymond v. Chicago Union Traction Co., 207 U. S. 20."

It is apparent from a reading of the bill in this case that plaintiff believes its property is assessed at a rate higher than it should be. In the McCallister case it was charged that it was fraudulently placed at the assessed value shown and the highest court in the state has shown that Sections 191 and 192 afford a tax payer a plain, adequate, complete and speedy remedy.

Relative to the charge that plaintiff is denied the equal protection of the laws of Illinois and that the assessment of its property as indicated amounts to a taking of property without due process of law within the meaning of the 14th Amendment to the Federal Consti-

tution. It has long been the rule that a law authorizing the imposition of a tax or assessment upon property according to its value does not infringe that provision of the 14th Amendment to the Constitution, which declares that no State shall deprive any person of property without due process of law, if the owner has an opportunity to question the validity or the amount of it either before that amount is determined or in subsequent proceedings for its collection. McMillen v. Anderson, 95 U. S. 37; Davidson v. New Orleans, 96 U. S. 97; Hager v. Reclamation District, 111 U. S. 701, 4
27 Sup. Ct. 663; Spencer v. Merchant, 125 U. S. 345, 8 Sup. Ct. 921; Palmer v. McMahon, 133 U. S. 660; 10 Sup. Ct. 324; Lent v. Tillson, 140 U. S. 316, 11 Sup. Ct. 825; Railway v. Backus, 154 U. S. 421; 14 Sup. Ct. 1114.

It is contended by plaintiff that Raymond v. Chicago Union Traction Co., 203 U. S. 20, is conclusive authority to sustain its contention that the plaintiff here is without a plain, adequate and complete remedy at law and that this court should take jurisdiction of the case. In the opinion in that case no legal proposition is made clearer than that equity will not intervene where there is a plain and adequate remedy at law. On page 39 of the opinion in that case, it is recited that there was in existence in Tennessee a statute providing for paying over the amount of the alleged illegal tax to the officer holding the warrant and granting to the tax payer the right to sue to recover back the taxes thus paid; also providing that the tax when originally paid before suit should be paid into the state treasury, where it was to remain until the question was decided. The opinion expressly says, on page 39:

"There is no statute of a similar nature in Illinois which has been called to our attention, but some of the cases in the State hold that such a suit may be maintained against the collector when the money was paid under protest."

Our attention has been called to Section 191 and 192 of Chapter 120 of the Revised Statutes of Illinois above referred to and discussed, and by a reading of the opinion on the McCallister case supra, we see the remedies provided by the statute in actual operation, and while the plaintiff in that litigation may not be satisfied with the final result of the litigation it is having, yet, this Court cannot say as a matter of law that the remedies provided in the laws of Illinois are not plain, adequate and complete. It is apparent that the tax payer can have the questions of irregularity, illegality and informality of the tax called in question, have his case heard
28 upon the merits in a tribunal especially provided by the laws of Illinois for that purpose, and if aggrieved to have the judgment of the court reviewed by the highest court in the state; and if successful in his litigation the tax payer will receive the amount paid to the collector without the slightest loss and without being put to the inconvenience or expense of the commencement of a single law suit. The remedies provided in these sections of the Revenue Act of Illinois affording such complete relief as they

do, make it unnecessary for the General Assembly to enact a statute authorizing the commencement of the independent action.

It is contended upon the authority of Shaffer v. Carter, (March 1, 1920), 666666 U. S., —, and Wallace, et al. v. Hines, et al., (April 21, 1920) —, U. S. —, that the mere fact that the tax is a lien upon the title of the tax payer and beclouds the same, that equity should intervene to remove the cloud. An examination of those two cases discloses that the Supreme Court is still holding in line with its earliest expressions that "there is jurisdiction in equity, unless there is an adequate remedy at law," and which, of course, is in line with the provisions of the Judicial Code on that subject (Sec. 267).

From this discussion we conclude that plaintiff has a plain, adequate and complete remedy at law and it is, therefore, unnecessary to discuss the other questions raised by the defe-dant's motion.

The motion to dismiss will be allowed and it is so ordered.

Indorsed: Filed June 26, 1920. R. C. Brown, clerk.

29 And afterwards, to wit: on the 13th day of July A. D. 1920, there was filed in the office of the Clerk of the District Court of the United States for the Southern District of Illinois, a certain petition for appeal, which said petition was and is in the words and figures, following, to wit:

30 In the District Court of the United States for the Southern Division of the Southern District of Illinois.

In Equity.

KEOKUK & HAMILTON BRIDGE CO., Complainant,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. WILLIAMS, J. H. HELMS, and CHAS. S. TYLER, Defendants.

Petition for Appeal.

To the Honorable Louis Fitz Henry, district judge:

The above named complainant feeling aggrieved by the decree rendered and entered in the above entitled cause on the 26th day of June, A. D. 1920, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and complainant prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and document upon which said decree was based, duly authenticated be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of complainant be made.

F. T. HUGHES &
D. E. MACK,
Solicitors and of Counsel for Complainant.

Indorsed: Filed July 13, 1920. R. C. Brown, clerk.

31 And afterwards, to wit: on the 13th day of July A. D. 1920, there was filed in the office of the Clerk of the District Court of the United States for the Southern District of Illinois, a certain assignment of errors, which said assignment of errors, was and is in the words and figures, following, to wit:

32 In the District Court of the United States for the Southern Division of the Southern District of Illinois.

In Equity.

KEOKUK & HAMILTON BRIDGE CO., Complainant,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. WILLIAMS, J. H. HELMS, and CHAS. S. TYLER, Defendants.

Assignment of Errors.

Now comes the complainant in the above entitled cause and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause, from the decree made by the honorable court on the 26th day of June, 1920.

1.

That the said District Court erred in sustaining the motion to dismiss interposed by the defendants and appellees herein to complainant's said bill of complaint.

2.

That the said United States District Court erred in holding that the complainant had a plain, adequate and complete remedy at law and therefore that the said District Court had no jurisdiction in the cause.

3.

That the Court erred in not holding that it had equitable jurisdiction to remove the cloud upon complainant's said property cast by a lien of the alleged illegal levy of said taxes.

4.

The Court erred in holding that complainant was not entitled to equitable relief as against the said invalid tax levy.

33

5.

The Court erred in not holding that equity has jurisdiction to restrain the collection of the tax assessed upon the property of a complainant's corporation when made at a different rate, and a different method from that employed by other corporations for the same class, for the same year and resulting in a material discrimination against the complainant's corporation shown in the bill of complaint.

6.

The Court erred in holding that the complainant's corporation was not a railroad corporation owning railroad track which could only be assessed by the State Board of Equalization under Section 109, Chapter 120, Revised Statutes of the State of Illinois and not by the township assessors as lands.

7.

Complainant's bill of complaint shows that it is for the most part a railroad forming a link of certain railroads in the State of Illinois, with railroads in the State of Iowa, engaged in the Interstate Commerce between said States with a franchise from said States and the United States, with corporate stock and bonds and was assessed on a mileage basis on the part in Illinois bears to the whole line in the respective States and the Court erred in holding under the circumstances that the laws of the State of Illinois in such cases furnished complainant with a complete and adequate remedy at law.

8.

The complainant shows that its Bridge property is part railroad and part railroad track and was assessed by the township assessors as lands and in a lump sum and that the railroad part can only be assessed by the State Board and the whole assessment is therefore void and the Court erred in holding the assessment valid and that the complainant had a plain, adequate and complete remedy at law in the premises.

34

9.

The Court erred in holding that complainant could not enjoin the collection of said tax to save a multiplicity of suits in recovering said taxes back when the same would be distributed to the various parties entitled to the same and especially that part which would go to the State because the State can not be sued therefor.

10.

The Court erred in holding that the Illinois Revised Statutes, Chapter 120, Section 192, provides the complainant with a plain, adequate and complete remedy at law *and* therefor.

11.

The remedy provided in said Chapter 120, Section 192, is uncertain and speculative and doubtful and the Court erred in holding the same afforded the plaintiff a plain, adequate and complete remedy at law.

12.

The Court erred in not granting complainant's temporary injunction or restraining order as prayed for in complainant's bill of complaint.

F. T. HUGHES &
D. E. MACK,
Solicitors & Counsel for Complainant.

Indorsed: Filed July 13, 1920. R. C. Brown, clerk.

35 And afterwards, to wit: on the 26th day of July A. D. 1920, the following further proceedings were had in said Court in said cause and were entered of record to wit:

36 In the District Court of the United States for the Southern Division of the Southern District of Illinois.

In Equity.

No. 87.

KEOKUK & HAMILTON BRIDGE COMPANY, Complainant,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. WILLIAMS, J. H. HELMS, and CHAS. S. TYLER, Defendants.

Order Allowing Appeal.

On motion of F. T. Hughes, Esq., solicitor and counsel for complainant, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States. It is further ordered that the bond on appeal be fixed at the sum

of $1,000. The same to act as a supersedeas bond and also as a bond for cost and damages on appeal.

Dated July 18, 1920.

LOUIS FITZ HENRY,
Justice.

Indorsed: Filed July 26, 1920. R. C. Brown, clerk.

37 And afterwards, to wit: on the 26th day of July A. D. 1920, there was filed in the office of the Clerk of the District Court of the United States for the Southern District of Illinois, a certain bond on appeal, which said bond on appeal, was and is in the words and figures, following to wit

38 In the District Court of the United States for the Southern Division of the Southern District of Illinois.

In Equity.

No. 87.

KEOKUK & HAMILTON BRIDGE COMPANY, Complainant,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. WILLIAMS, J. H. HELMS, and CHAS. S. TYLER, Defendants.

Bond on Appeal.

Know all men by these presents, that we Keokuk & Hamilton Bridge Company, as principal, and James McCahan and John Cole, as sureties, of the County of Lee, State of Iowa, are held and firmly bound unto Fred Salm, Jr., Elmer F. Dennis, William E. Miller, Arch C. Williams, J. H. Helms and Chas. S. Tyler, in the sum of $1,000, lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, by these presents.

Sealed with our seals and dated this 5th day of July, 1920.

Whereas the above named Keokuk & Hamilton Bridge Company, has prosecuted an appeal to the Supreme Court of the United States to reverse the judgment of the district court for the Southern Division of the Southern District of Illinois, in the above entitled cause:

Now, therefore, the condition of this obligation is such that if the above named Keokuk & Hamilton Bridge Company shall prosecute

its said appeal to effect and answer all costs if it fail to make
39 good its *his* plea, then this obligation shall be void: otherwise to remain in full force and effect.

KEOKUK & HAMILTON BRIDGE CO.,
By J. H. COLE,
Its Agent in Fact.
J. H. COLE,
JAMES McCAHAN.

STATE OF IOWA,
County of Lee, ss:

On the 5th day of July, 1920, personally appeared before me John H. Cole, Agent in fact of Keokuk & Hamilton Bridge Company and John H. Cole and James McCahan, respectively known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto, and respectively acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said John H. Cole, Agent in fact, and the said John H. Cole and James McCahan, being respectively by me duly sworn, says each for himself and not one for the other, that he is a resident and householder of the said county of Lee and that he is worth the sum of $5,000 over and above his just debts and legal liability and property exempt from execution.

J. H. COLE.
J. H. COLE.
JAMES McCAHAN.

Subscribed and sworn to before me this 5th day of July, A. D. 1920.

[Notarial Seal.] F. T. HUGHES,
Notary Public.

The within bond is approved both as to sufficiency and form this 26th day of July, 1920.

LOUIS FITZ HENRY,
Justice.

Indorsed: Filed, July 26, 1920. R. C. Brown, Clerk.

40 Afterwards, to wit: On the 26th day of July, A. D. 1920, the following further proceedings were had in said Court in said cause and were entered of record to wit:

41 In the District Court of the United States for the Southern Division of the Southern District of Illinois.

KEOKUK & HAMILTON BRIDGE COMPANY, Complainant,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. WILLIAMS, J. H. HELMS, and CHAS. S. TYLER, Defendants.

Supersedeas Order.

This cause coming on to be heard this 26th day of July, 1920, upon the application of the appellant for an appeal to the Supreme Court of the United States, and said appeal having been allowed, it is ordered that the same shall operate as a supersedeas, the said appellant having executed bond in the sum of $1,000 as provided by law, and the clerk is hereby directed to stay the mandate of the district court of Southern district of Illinois, until the further order of this Court.

LOUIS FITZ HENRY,
Justice.

Indorsed: Filed July 26, 1920. R. C. Brown, clerk.

42 And afterwards, to wit: On the 15th day of July, A. D. 1920, there was filed in the office of the Clerk of the District Court of the United States for the Southern District of Illinois, a certain motion to continue injunction pending appeal, which said motion, was and is in the words and figures, following, to wit:

43 In the District Court of the United States for the Southern Division of the Southern District of Illinois.

KEOKUK & HAMILTON BRIDGE COMPANY, Complainant,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. WILLIAMS, J. H. HELMS, and CHAS. S. TYLER, Defendants.

Motion to Continue Injunction Pending Appeal.

To the Honorable Louis Fitz Henry, district judge:

Your petitioner shows that it has appealed to the Supreme Court of the United States your Honor's decree, June 26th, 1920, dismissing complainant's bill. Complainant has perfected its appeal which your honor has allows and also a bill in the sum of $1,000 which I understand your Honor fixed to serve as a bond for cost supersedeas.

Complainant now shows that while the case was pending and under advisement of your Honor, your Honor directed an order to

opposing counsel, Earl Wood, Esq., to stay proceedings in the State Court by suit or otherwise during the pendency while the case was under advisement. Mr. Wood very cheerfully conformed to your Honor's request or order, and we have no doubt and will very gladly conform to the order herein made by your Honor. However we feel that Mr. Wood would feel it his duty to proceed in the State Court from the absence of any such order from your Honor.

Complainant further shows that the carrying on of the suit in the State Court, pending this appeal will entail very large expense and costs of many witnesses, the costs of all of which would fall upon the defendants in case your Honors should be reversed in holding that Complainant's bill does not state facts entitling the plaintiff to the injunction prayed.

44 Complainant therefor prays your Honor to continue the stay of such proceedings in the State Court pending the appeal herein to the same extent and manner as was continued while the case was pending in your Honor's court.

Complainant shows that the errors in your Honor's — in so decreeing, if any, arrise on the face of complainant's bill and that the hearing in this case can be had by motion under the rules of the Federal Supreme Court on any Monday after the Court meets, October next. The motion need be none other than that which was submitted by defendant's counsel in your Honor's court, only the motion would be to dismiss the appeal and not dismiss the bill. That complaint will at once be caused to be docketed in the Supreme Court and have the record printed and ready for hearing prior to the meeting of the Federal Supreme Court of October and that the matter can be heard without any unreasonable delay and the court's conclusion will determine whether the plaintiff must make its defense at law in the suit of the State court or not.

Wherefore, complainant prays your Honor to stay the proceedings as herein prayed and such order as made proper in the premises.

F. T. HUGHES AND
D. E. MACK,
Counsel for Appellant.

Indorsed: Filed July 26, 1920. R. C. Brown, clerk.

45 And afterwards, to wit: on the 3rd day of August A. D. 1920, there was filed in the office of the Clerk of the District Court of the United States for the Southern District of Illinois, a certain præcipe for transcript, which said praæcipe was and is in the words and figures, following, to wit:

46 United States District Court, Southern District of Illinois, Southern Dvision.

In Equity.

No. 87.

KEOKUK & HAMILTON BRIDGE COMPANY

vs.

FRED SALM, JR., County Treasurer and ex Officio Collector of Hancock County et al.

Precipe for Transcript.

The Clerk of the District Court will incorporate in the transcript of the record on this appeal in full.

1st. The bill of complaint.

2nd. Process and appearances bringing defendants into Court.

3rd. Application of appellant in Court below for preliminary injunction and appellee's motion to dismiss all in full.

4th. Order of submission with dates.

5th. Opinion of Court and decree dismissing bill of complaint in full.

6th. All papers in full as to petition for appeal to the Supreme Court bond and supersedeas allowance of appeal and citation.

F. T. HUGHES &
D. E. MACK,
Counsel for Complainant and Appellant.

Service of above accepted this 2nd day of August 1920.

EARL W. WOOD,
Counsel for Defendants and Appellees.

Indorsed: Filed August 3rd, 1920. R. C. Brown, clerk.

47 And afterwards, to wit: on the 21st day of August A. D. 1920, the following further proceedings were had in said Court in said cause and were entered of record to wit:

In the District Court of the United States for the Southern District of Illinois, Southern Division.

In Equity.

No. 87.

KEOKUK & HAMILTON BRIDGE CO.

vs.

FRED SALM, JR., et al.

And now on this 21st day of August A. D. 1920, comes the complainant herein by Messrs. D. E. Mack and Felix T. Hughes, its solicitors and on their motion, it is ordered by the Court that the time for filing the transcript of record herein in the Supreme Court of the United States, be, and the same is hereby extended to ten days from and after August 24th, A. D. 1920.

48 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Fred Salm, Jr., Elmer F. Dennis, William E. Miller, Arch C. Williams, J. H. Helms, and Charles S. Tyler, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at City of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of Illinois, Southern Division, wherein the Keokuk & Hamilton Bridge Company is complainant and appellant and you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said appellant in error as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Louis Fitz Henry, Judge of the District Court of the United States, this 26th day of July, in the year of our Lord one thousand nine hundred and twenty.

LOUIS FITZ HENRY,
U. S. District Judge.

Service of the foregoing Citation and receipt of a copy thereof is hereby admitted this 2nd day of August A. D. 1920.

EARL W. WOOD,
Solicitor for All Defendants.

Indorsed: Filed August 3rd, 1920. R. C. Brown, clerk.

49 UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division, ss:

I, R. C. Brown, Clerk of the District Court of the United States for the Southern District of Illinois and keeper of the records and Seals thereof, do hereby certify the foregoing to be a true and complete transcript of the proceedings had of record in said Court, made in accordance with Præcipe filed in the cause entitled Keokuk & Hamilton Bridge Company, a corporation, vs. Fred Salm, Jr., et al. as the same appear from the original Records and Files thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court at Springfield, in said District this 23rd day of August, A. D. 1920.

[Seal of the District Court United States, Southern District Illinois.]

R. C. BROWN,
Clerk.

Endorsed on cover: File No. 27,869. S. Illinois D. C. U. S. Term No. 512. Keokuk & Hamilton Bridge Company, appellant, vs. Fred Salm, Jr., Elmer F. Dennis, William E. Miller, et al. Filed August 28th, 1920. File No. 27,869.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

No. ~~512.~~ 130

KEOKUK & HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS,
WILLIAM E. MILLER, ET AL.,
APPELLEES.

MOTION TO ADVANCE AND SUBMIT CAUSE TO THIS COURT.

F. T. HUGHES,
Solicitor for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

No. 512.

KEOKUK & HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS,
WILLIAM E. MILLER, ET AL.,
APPELLEES.

MOTION TO ADVANCE AND SUBMIT CAUSE TO THIS COURT.

Now comes the appellant, Keokuk & Hamilton Bridge Company, herein and shows to the Court that the appellees have flied motion and brief in this Court in this cause to dismiss appellant's appeal herein for want of jurisdiction in the court below, and for cause says there is no certificate in the record from the court below to this Court in which the question of jurisdiction is certified to this Court and no question of jurisdiction as a Federal Court appears either by the terms of the decree, or order appealed from, or the order allowing the appeal.

The appellant denies the court below had not jurisdiction of the parties and the subject matter and denies that any certificate of the court is necessary in this cause on this appeal and asserts that the appeal was taken from a final decree of the court below

to this Court and that this Court has jurisdiction. This appellant has served the appellees with a copy of this motion and brief on appellees' motion to dismiss and on appellant's motion herein to advance and submit in the first instance on printed briefs in connection with the hearing on appellees' motion to dismiss, that the question on which the decision of this cause depends have been settled by previous decisions of this Court, so as not to need extended or further argument.

And that appellant's motion will come on for hearing in this Court in connection with appellees' motion to dismiss the appeal on Monday the 28th day of February, A. . 1921, the opening of the Court or as soon thereafter as counsel may be heard.

F. T. HUGHES,
Solicitor for Appellant.

Notice of the foregoing motion with copy of brief attached received and service of same acknowledged this 1st day of February, 1921.

LEE STEBENBORN,
States Attorney.

EARL W. WOOD,
Solicitor for Appellees.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 512.

KEOKUK AND HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL., APPELLEES.

MOTION TO STRIKE.

Now come the appellees, Fred Salm, Jr., county treasurer and *ex officio* collector of Hancock County, Illinois; Elmer F. Dennis, local assessor; William E. Miller, county clerk; Arch C. Williams, J. H. Helms, and Charles S. Tyler, board of review, all in said county and State, by their counsel, and move the court to strike from the files of this court the purported motion of appellant to advance and submit this cause to this court, served upon appellees February 1, 1921, for the following reasons:

1. The motion is ambiguous and uncertain in its language.

2. The motion does not request this court to advance and submit the cause.

3. The motion assigns no reason for advancing and submitting the cause.

4. The motion does not show that it is based on rule 32 of this court.

5. The record shows that this motion was not authorized under rule 32 of this court.

6. Prior to the time that this motion was served upon appellees, the appellant was served with motion of appellees to dismiss this appeal for want of jurisdiction in this court. This motion to dismiss is now pending in this court.

Respectfully submitted,

LEE SEIBENBORN,
State's Attorney,
EARL W. WOOD,
Solicitors for Appellees.

NOTICE.

To David E. Mack and Felix T. Hughes, Solicitors for Appellant:

Please take notice that on Monday, the 28th day of February, A. D. 1921, at the opening of court, or as soon afterwards as counsel may be heard, we will present the fore-

going motion to the Supreme Court of the United States in this cause.

LEE SEIBENBORN,
State's Attorney,
EARL W. WOOD,
Solicitors for Appellees.

Service of a copy of the foregoing motion and notice of motion is hereby acknowledged this 15th day of February, A. D. 1921.

F. T. HUGHES,
Solicitor for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 130

KEOKUK AND HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL., APPELLEES.

MOTION TO DISMISS AND BRIEF ON MOTION.

LEE SIEBENBORN,
State's Attorney,
EARL W. WOOD,
Attorneys for Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 512.

KEOKUK AND HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL., APPELLEES.

MOTION TO DISMISS.

Now come the appellees, Fred Salm, Jr., county treasurer and ex officio collector of Hancock County, Illinois; Elmer F. Dennis, local assessor; William E. Miller, county clerk; Arch C. Williams, J. H. Helms, and Charles S. Tyler, board of review, all in said county and State, by their counsel, and move the court that the appeal to this honorable court in this cause be dismissed for want of jurisdiction.

This is an appeal from an order of the United States Dis-

trict Court of the Southern District of Illinois, Southern Division, dismissing appellant's bill in equity on appellees' motion. The bill sought to enjoin the collection of certain taxes on appellant's bridge.

This court is without jurisdiction because:

1. There is no certificate in the record from the court below to this court in which the question of jurisdiction is certified to this court and no question of jurisdiction as a Federal court appears, either by the terms of the decree or order appealed from or the order allowing the appeal, nor is there anything in the entire record showing that the court below sends up for consideration the question of its jurisdiction as a Federal court.

2. The question of the jurisdiction of the district court as a Federal court was not in issue in the cause appealed from, but the sole issue as shown by the record was as to the general equitable jurisdiction of a court of equity.

And in the event the foregoing motion is granted the appellees respectfully pray the court to direct the clerk of this honorable court to issue the mandate forthwith.

LEE SIEBENBORN,
State's Attorney.
EARL W. WOOD,
Attorneys for Appellees.

BRIEF ON MOTION.

1.

There is no certificate in the record in which the question of jurisdiction is certified by the court below to this court. The decree of the court below, the order appealed from, and its order allowing the appeal, does not show that it sends up for consideration the question of its jurisdiction as a Federal court.

Printed Record, pages 10 to 16, inclusive.
Printed Record, pages 19 to 20, inclusive.

The record must distinctly and unequivocally show that the court below sends up for consideration a single and definite question of jurisdiction—that is, of the jurisdiction of the court as a court of the United States.

Maynard *vs.* Hecht, 157 U. S., 324; 14 S. Ct., 353; 38 U. S. (L. Ed.), 179.

Filhiol *vs.* Forney, 194 U. S., 356; 24 S. Ct., 698; 48 U. S. (L. Ed.), 1014.

Apapas *vs.* U. S., 233 U. S., 587; 34 S. Ct., 704; 58 U. S. (L. Ed.), 1104.

Courtney *vs.* Pratt, 196 U. S., 89; 25 Sup. Ct., 208; 49 U. S. (L. Ed.), 398.

Huntington *vs.* Laidley, 176 U. S., 668; 20 Sup. Ct. Rep., 526; 44 L. Ed., 630.

2.

An appeal cannot be taken from a district court of the United States direct to the Supreme Court of the United

States where the only question in issue in the cause from which the appeal is taken is the question of the equitable jurisdiction of the Federal court. It is only when the question of the jurisdiction of the lower court as a Federal court is in issue in the cause appealed from that such an appeal will lie.

Smith *ex.* McKay, 161 U. S., 355; 16 Sup. Ct., 490; 40 L. Ed., 731.

Blythe *ex.* Hinckley, 173 U. S., 501; 19 Sup. Ct., 497; 43 L. Ed., 783.

Appellant clearly concedes in its motion to advance and submit this cause, served upon counsel for appellees January 19, 1921, that the only question decided by the lower court in the final judgment from which this appeal was taken was that the court below did not have equitable jurisdiction, and it is also conceded in this motion that the only thing brought to this court for determination is as to whether or not the court below had equitable jurisdiction to hear the cause. Said motion is as follows:

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 512.

KEOKUK & HAMILTON BRIDGE CO., *Complainant and Appellant,*

vs.

FRED SALM, JR., ET AL., *Defendants and Appellees.*

MOTION TO ADVANCE AND SUBMIT UNDER RULE 32 OF THIS COURT.

Now comes the appellant, Keokuk & Hamilton Bridge Co., and shows to your honors that the only question in issue on this appeal is the question of the jurisdiction of the court below. The following constitutes a brief statement of the facts involved in this motion. The appellant brought this bill in the court below to enjoin the appellees from taking any further proceeding towards the collection of certain taxes assessed against the appellant upon the assessment alleged to be in violation of the 14th Amendment to the Constitution of the United States and which, if enforced, would result in taking of appellee's property without due process of law and to denying it the equal protection of the laws, and for the other allegations in complainant's bill of complaint, wherein appellant shows that it is without remedy at law to protect itself against the alleged illegal and inequitable acts of the defendants in and about the premises. The appellees in said court filed motion in the nature of the demurrer to dismiss

complainant's bill for the reason that the complainant had a plain and adequate remedy at law, as provided in chapter 120, sections 191-192, of the laws of the State of Illinois and was not, therefore, entitled to the equitable relief prayed. The court below sustained this motion and dismissed complainant's bill and entered a final decree to that effect. The appellants bring this case to this court on appeal, and the sole question here, as shown by the record and opinion of the court below, is one of jurisdiction. The concluding part of the court's opinion says:

"From this discussion, we conclude that plaintiff has a plain, adequate, and complete remedy at law, and it is therefore not necessary to discuss the other questions raised by defendant's motion."

It will be seen that the "remedy at law" on which the court found its opinion is the Illinois Revised Statute, chapter 120, section 191, 5 J. & A. Illinois Statute Annotated, section 9410, page 5542.

This remedy at law we claim is one arising out of the law of the State and not one under the laws of the United States, nor a common-law remedy, but strictly statutory and confined exclusively to the remedy at law by way of defense in the county court of the county in which the taxes are sought to be enjoined or levied or collected, and this county court has no equitable jurisdiction.

The appellant duly served the appellees with notice of the foregoing motion to advance and submit, with copy of brief and argument upon counsel for appellees of record in this court, more than three weeks before the time fixed for submitting said motion by appellant.

Wherefore this appellant prays this honorable court to

reverse the decree of the court below dismissing complainant's bill of complaint and for all other and proper orders in the premises.

F. T. HUGHES,
D. E. MACK,
Attorneys for Complainant.

Clearly it was error to take this appeal to this honorable court. It should have been taken to the United States Circuit Court of Appeals.

Respectfully submitted,

LEE SIEBENBORN,
State's Attorney,
EARL W. WOOD,
Attorneys for Appellees.

NOTICE.

To David E. Mack and Felix T. Hughes, attorneys for appellant:

Please take notice that on Monday, the 28th day of February, A. D. 1921, at the opening of court, or as soon thereafter as counsel may be heard, we will present the foregoing motion and brief to the Supreme Court of the United States in said cause.

LEE SIEBENBORN,
State's Attorney,
EARL W. WOOD,
Attorneys for Appellees.

Service of a copy of the foregoing motion and brief and notice of the motion and brief are hereby acknowledged this 21st day of January, A. D. 1921.

F. T. HUGHES,
D. E. MACK,
Attorneys for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

No. [redacted]130

KEOKUK & HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS,
WILLIAM E. MILLER, ET AL.,
APPELLEES.

APPELLANT'S BRIEF ON ~~APPELLANT'S~~ Appellee's MOTION TO DISMISS, AND ON APPELLANT'S MOTION TO ADVANCE AND SUBMIT ON PRINTED BRIEF.

F. T. HUGHES,
Solicitor for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

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INDEX.

IN THE

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APPELLEES.

APPELLANT'S BRIEF

STATEMENT.

Appellees have served appellant with notice and brief to dismiss the appeal for want of jurisdiction because there is no certificate in the record from the court below to this Court, and no question of jurisdiction as a Federal Court appears by the decree appealed from or the order allowing the appeal, and notice served with brief that the motion will come on for hearing before this Honorable Court on Monday, the 28th day of February, 1921. Our answer is that there was no question of jurisdiction raised by either party in the court below and the cause was submitted on the appellees' motion as we shall show in the nature of a demurrer to complainant's bill assigning causes as shown on Tr. p. 7:

"2. Because the plaintiff has a remedy at law and does not aver in the bill that it has exhausted said remedy.

4. Because no ground of equitable jurisdiction is sufficiently averred in the bill in this suit." And some other causes.

Appellant resists this motion by brief and moves the Court and has served notice on appellees with briefs that appellant will move the Court on the same day to advance and submit the cause on printed briefs and that both motions may be heard together at the time named. Appellee's motion to dismiss as the record shows was sustained by the court below and appellant not further pleading, the Court dismissed complainant's bill with costs saying, Tr. p. 16:

"There is jurisdiction in equity unless there is an adequate remedy at law."

All these matters appear in our statement and brief following herein and as we shall show an appeal lies from the District Court below direct to this Court from a judgment or final decree in such cases in the court below and this is the correct practice, therefore, no certificate as to jurisdiction is required.

POINTS AND AUTHORITIES ON MOTION TO DISMISS AND MOTION TO ADVANCE AND SUBMIT.

The bill and its amendment in this case were framed after the case of the *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 53 L. ed. 78, affirming *Chicago Union Traction Co. v. State Board of Equalization*, 114 Fed. 557, and other cases of this Court which we shall cite. The Raymond case in this Court arose under the same revenue laws, that is, *Hurd's Rev. Stat.* 1899, Chap. 120, save that in the Raymond case the injunction was against the State Board of Equalization, whose duty it was to assess capital stock of companies and associations, railroads, railroad track and rolling stock under Sections 108 and 109 of Chap. 120, while the local board or township assessors assessed lands, bridges on the border of the State under the provisions for assessment and taxing of real estate as provided in

Sec. 254 of the Chap. 120. This case was against the local or township assessors and collecting officers restraining them from assessing and collecting certain taxes as is shown in the bill and in the assignment of errors on this appeal:

First—That these assessors assessed appellant's property as real estate at about 150 per cent of the full cash value at the time, while all other property of a similar class and kind for the same year by a systematical and intentional disregard of the laws of said State was assessed at about 30 to 40 per cent of such fair value resulting in an enormous disparity and discrimination, and in violation of the Fourteenth Amendment to the Constitution of the United States and denying to complainant the equal protection of the laws.

Second—That appellant's property was railroad property, and its bridge a railroad forming a link of the railroads engaged in interstate commerce from the State of Illinois across the Mississippi River into the State of Iowa and elsewhere, and as such could only be assessed by the State Board of Equalization as railroad and railroad track and not by the local assessors as real estate, and that in so assessing complainant's property and at a valuation of 150 per cent of the cash value as against 30 or 40 per cent of such fair cash value of other property of a similar class and kind and for the same year this complainant is and was denied the equal protection of the laws and its property being taken without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Third—That under the laws of the State, taxes are assessed and levied against the property and not the person or owner and become a lien and cloud upon the title of appellant's property, which can only be removed by a court of equity and that the county court in which these taxes are sought to be enforced and collected has no equitable jurisdiction to remove liens and clouds on title to real estate.

Fourth—Under the laws of the State of Illinois,—

"When the collector receives money for taxes, he pays the same over to the County Treasurer and other officers authorized to receive same, and if appellant institutes a suit to recover back the taxes so paid, he would be obliged to bring separate suit against each one of the several taxing bodies receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and the proportion of the tax which would go to the State of Illinois could not be collected back by any legal proceeding whatsoever."

This of itself warrants a resort to equitable relief.

These and other facts and the law we shall show warrants the equitable relief prayed for in our bills and its amendment.

On hearing of the bill in the court below, appellant moved the Court for a temporary injunction, restraining the appellees from the commission of the alleged wrongful acts.

The appellees filed their motion to dismiss in the nature of a demur to complainant's bill because on the facts alleged the Court had no equitable jurisdiction to restrain the alleged wrongful acts because the appellant had a "plain, adequate and complete remedy at law within the provisions of the Judicial Code on the subject (Sec. 276)", and relying especially upon Chap. 120, Secs. 191 and 192, Revised Statutes of Illinois, as furnishing such adequate remedy at law. The court below heard the motion for temporary injunction and appellee's motion to dismiss plaintiff's bill of complaint and after due consideration on June 26th, 1920, denied complainant's motion for temporary injunction and sustained defendant's motion to dismiss and there being no amendment or further pleading, it was therefore ordered and adjudged by the Court that the defendants recover from the said complainant their costs and charges expended and that execution issue therefor. Transcript of record, pp. 10 and 11. This decree terminated the litigation between the parties on the merits of the case, and from which decree the appellant appeals directly to this Court, under Sec. 238, Judicial Code (36 Stat. L., 1157, Chap. 231, Comp. Stat. 1916, Sec. 1215). This is the proper procedure as shown in *Green v. Louisville & I. R. Co.*, 244 U.S.

499, 503, 61 L. ed. 1280-1284, and in *Columbus R. W. Power & Light Co. v. Columbus*, 249 U. S. 394, 406, 63 L. ed. 669, 675, where this Court again referring to Judicial Code, Sec. 238, says:

"As we have said the Court decided the case upon the merits and dismissed the bill as a constitutional question is involved, the appeal brings the whole case here. We are of the opinion that there was jurisdiction in the District Court to entertain the bill as it presented questions arising under the Fourteenth Amendment to the Federal Constitution, not so wholly lacking in merit as to afford no basis of jurisdiction. Jurisdiction does not depend upon the decision of the case and should be entertained if the bill presents a question of a character giving the party the right to invoke the judgment of a Federal Court. We think the elaborate and careful opinion of the District Judge shows that substantial questions arising under the Federal Constitution were presented by the bill and that the Court had jurisdiction."

In *Shaffer v. Carter* (Mar. 1, 1920), reported in L. R. A. Advanced Opinions, United States Supreme Court, April 1, 1920, at p. 235, 236, this case practically in point, where the Court says:

"An application for an interlocutory injunction was denied, and the decree entered not only disposed of the application, but dismissed the action. Plaintiff, apparently unaware of this, appealed to this court under Sec. 266, Judicial Code, from the refusal of the temporary injunction. Shortly afterwards he took an appeal under Sec. 238, Judicial Code, from the same decree as a final decree dismissing the action. The latter appeal is in accord with correct practice, since the denial of the interlocutory application was merged in the final decree. The first appeal (No. 531) will be dismissed."

And this holding runs through all the cases down to *De Rees v. Costagota*, No. 4, L. R. A. Advanced Opinions, United States Supreme Court, January 21, 1921, p. 111.

The opinion of the Court in appellant's case shows most clearly that Federal questions involving the Fourteenth Amendment were presented by the bill and passed on by the court below with other matters. The whole case was decided upon the merits.

For these reasons the motion to dismiss the appeal for want of certificate from the court below or for any other reason must be overruled.

We offer the further suggestions in this *Brief* on the merits and to the end that the decree of the court below be *reversed.*

The court below did not and could not say complainant's bill did not state facts warranting the equitable relief prayed for under the chancery rules of the Federal Courts but held that a certain law of the State, Chap. 120, Sections 191 and 192, afforded such an adequate remedy at law as to bar any equitable proceedings in any Court and that the complainant however meritorious his cause might be was confined to his defense at law provided for this Chapter, whether complainant be a resident or non-resident of the State and whether or not by reason of non-residence of Federal questions, complainant could choose his forum, and would bring his bill in the Federal Court. He must and could only make a *legal* defense in the County Court of the State under the Chapter.

This was challenged for the reasons that a law of a State may furnish an adequate remedy at law for those who must from residence or otherwise accept the forum of the State, but this does not of itself prevent a party who may and can resort to the Federal Courts for such equitable relief and his mere choice is sufficient and it is not in the mouth of the State to say that its remedy is as good and efficient as that of the Federal Court. For it is and always has been the law that a remedy available only in the State court is for this reason alone not an adequate remedy where the plaintiff by reason of his Federal question has the right to have the matter determined in the Federal Court.

Then in *Smyth v. Ames,* 169 U. S. 466, 517, 42 L. ed. 819, 838, it is said:

"Wherever a citizen of a State can go into the courts of a State to defend his property against the illegal acts of its officers, a citizen of another State may invoke the jurisdiction of the Federal Courts to maintain a like defense. A State cannot tie up a citizen of another State, having property rights within its territory invaded by unauthorized acts of its officers, to suits for redress in its own courts."

Franklin County v. Nevada Power Co., 264 Fed. 643, U.S.A.
Pittsburg v. Keokuk & Hamilton Bridge Co., 68 Fed. 19.
McCanihay v. Wright, 121 U. S. 201-202.
Whitehead v. Shattuck, 138 U. S. 146.

In the Franklin County case on p. 645, speaking of the Nevada State law of 1914, as affording such adequate remedy at law, the Court says:

"It might be readily pointed out (as was done by the court below in its opinion) why that contention is not well-founded; but we think it unnecessary to do so, for the reason that the law is that the adequate remedy at law which is the test of equitable jurisdiction in the Federal Court must exist in those courts." Citing authorities.

Then in *Pittsburg v. Keokuk & Hamilton Bridge Co.* the Circuit Court of Appeals of that circuit by Jenkins, Circuit Judge, says:

"The judiciary act of 1789 provided that 'suits in equity shall not be sustained in either of the courts of the U. S. in a case where a plain, adequate and complete remedy may be had at law.' 1 Stat. 82; Rev. Stat. Sec. 723. This provision has been held to be merely declaratory, making no alteration whatever in the rules of equity upon the subject of legal rmedy. Boyce's Ex'rs v. Grundy, 3 Pet. 210, 215; Wehrman v. Conklin, 155 U. S. 314, 15 Sup. Ct. 129. The adequate remedy at law which is the test of equitable jurisdiction in the Federal Courts is that which existed at the adoption of the judiciary act. Thus, it was said by Judge Story in Pratt v. Northam, 5 Mason, 95, 105, Fed. Cas. No. 11, 376:

> 'It has been often decided by the Supreme Court that the equity jurisdiction of the courts of the United States is not limited or restrained by the local remedies in the different states; that it is the same in all the states, and is the same which is exercised in the land of our ancestors from whose jurisprudence our own is derived.' "

Now this law of the State, Chap. 120, Sections 191 and 192, referred to and relied on by the court below, Transcript of Record 15, is confined to a county court provided for in Section 18, of Article 6, of the Constitution of the State and has no common law or equity jurisdiction but confined to probate in

guardian matters and collection of revenues. Sec. 12 of this Constitution says:

"The Circuit Courts shall have original jurisdiction in all cases in law and equity."

So that in case a taxpayer chooses to resist the collection of taxes alleged to be illegally assessed should he pay these taxes to the Treasurer under protst and attempt to sue back for these taxes, he could not sue in this county court, but he would have to go to the Circuit Court.

Now, then, the only way that complainant can have any chance of paying his money and preventing it from being disturbed so that he will have to incur a multiplicity of suits is to allow the collector to sue in this county court for the taxes and let himself get defeated and then pay the taxes to the Treasurer and give a bond besides and an appeal to the Supreme Court from this tax judgment and the Treasurer in that case will hold the money until the Supreme Court has passed on the appeal and if his appeal is unsuccessful, the Supreme Court orders the Treasurer to pay the money over and judgment against the taxpayer for costs, penalties and etc., and that is the end of it.

There is no law in the State, as your Honors said in *Raymond v. Chicago Union Traction Company*, 207 U. S. 20, where on p. 390 of the Opinion, referring to the—

Existence in Tennessee of a statute providing for paying over the amount of the alleged illegal tax to the officer holding the warrant and granting to the taxpayer a right to sue to recover back the taxes thus paid, also providing that the tax when originally paid before the suit should be paid into the State Treasurer where it was to remain until the question was decided."

Further says:

"There is no statute of a similar nature in Illinois which has been called to our attention but some of the cases in the State hold that such a suit may be maintained against the collector when the money was paid under protest."

And your Honors will see on p. 15, of the Transcript of Record, that the court below answers your Honors' conclusions by quoting this Chap. 120, and Sections 191 and 192, to the

end that your Honors must have overlooked this Chapter because it was and had in force at that, for a long time prior and still is the law.

Now, when we compare this Chap. 120 with its provisions limiting the taxpayer to his action in this county court and depriving him of any right to common law action in any Court of competent jurisdiction and especially if he has the choice of suing in the Federal Court by reason of Federal questions or diverse citizenship, he cannot sue in such courts. This Statute furnishes no adequate remedy at law barring equitable or common law suits in the Federal Courts. It is not an adequate remedy at law within the varied constructions of that term. The Chap. 120 and Sections 191 and 192 provide only that—

"The Court shall hear and determine the matter in a summary manner without pleadings, and shall pronounce judgment as the right of the case may be."

There is no provision for a jury to hear and determine the weight of evidence, nor having the evidence certified to the Supreme Court so that court can really try the case *de novo*, and so the suit which the court below talks about while the money is held by the Treasurer pending the appeal is nothing more than a review of the law as determined and applied by the county court below and so there is no law of the State as your Honors say in the Raymond case by which the taxpayer can pay and then sue back as in the State of Tennessee, and the money be held by the Treasurer pending the suit, and moreover this Chap. 120 affords no means by which the money paid to the collector can be held while the taxpayer can sue for its recovering back in any court, State or Federal, to which he may have the right to resort, but must confine all his rights to the county court and its summary proceedings without pleadings and etc.

So your Honors were right in saying that there was "No statute of a similar nature in Illinois',' and because of that fact this Court did hold in the Raymond case that, "There is jurisdiction in equity unless there is an adequate remedy at law."

STATE LAW ADEQUATE REMEDY MUST BE AS BROAD AS FEDERAL LAW.

It was held in *Singer Sewing Machine, etc. Co. v. Benedict,* 229 U. S. 491, 57 L. ed. 1288-1291, that a law of a State which gives an adequate remedy at law must be one in which the party making a tender of the taxes must have the right to sue in any court of competent jurisdiction in which the party has a right to resort. This right must be one,—

"Which could be enforced by an action at law in the Circuit (U. S.) Court no less than the State Court if the elements of Federal jurisdiction such as diverse citizenship and the requisite amount in controversy."

In *Union Pac. R. Co. v. W'eld County,* 247 U. S. 282, 62 L. ed. 1110-1117, this case discusses the question of an adequate remedy at law provided in statutes and under the Statute of Colorado, which had provided such remedy at law as we may say would be good under the equity rules of the U. S. Court made some change in the law by which,—

"For any statement, rebate or refund of taxes shall be recommended by such County Commissioners, they should certify same to the Colorado tax commission for their approval."

And this change in the State law had the effect of conferring upon the Federal Court jurisdiction in equity. Mr. Justice Van de Vantet's delivering the opinion of the Court said:

"An examination of the new statute shows that the controversy just outlined is not without some real basis and that its solution is not free from difficulty. The question is purely one of *State law,* and so far as we are *advised,* the Supreme Court of the State has not *passed* on or *considered* it. A ruling by us on the question would neither settle it for that court nor be binding in an action to recover the tax if paid. In these circumstances it cannot be said that the company certainly or plainly has an adequate and complete remedy at law. On the contrary, the existence of such a remedy is debatable and un-

certain. And this being so, the situation is not one in which cognizance of the present suit properly can be declined."

And held that it could not be said the company certainly or plainly had adequate and complete remedy at law, and we may say that we could stop right here with the assurance that the court below was in error in dismissing complainant's bill and must be reversed, and these cases have certainly closed the discussion upon the subject matter of adequate remedy at law and the court below was in error in holding that the Chap. 120, of the laws of the State of Illinois afforded this complainant such adequate remedy as to preclude its going into the Federal Court for equitable relief.

REVENUE STATUTES OF ILLINOIS DO NO PREVENT RESORT TO EQUITY.

Chapter 120, Sections 191 and 192, of the revenue law of Illinois, do not provide an exclusive and adequate remedy in all cases arising out of revenue laws of that State even in courts of that State, but decisions of the Supreme Court that where the property has been fraudulently assessed at too high a rate or where it has been systematically and knowingly assessed at a different rate or valuation from other similar classes or property which is fraudulent in law and the same effect as intentional fraud, courts of equity will restrain the collection of such a tax.

Berkley v. Dale, 213 Ill. 616-617.
State Board of Equalization v. People, 191 Ill. 528-537.
Pacific Hotel Co. v. Lieb, 83 Ill. 602-609.
Lemont v. Singer & Talcott Stone Co., 98 Ill. 102.
Calumet etc. ock Co. v. O'Connell, 265 Ill. 106.

In the *Berkley v. Dale* case it is said:

"It has been held that an assessment may be impeached for fraud, and by reason of fraud in asking the assessment an assessment may amount to no assessment at all."

This was an action on bill in equity to enjoin the collection of a tax, and where the doctrine is clearly recognized, and the courts hold that where the assessment must have been so unreasonably high in comparison of other similar classes of such property, the assessor must have known of this unreasonably high assessment, the same would be as fraudulent in law as had the assessment been made with that intent.

The Calumet etc. Dock Co. v. O'Connell was a bill for an injunction which was sustained to enjoin an excessive assessment and the right to file such a bill was clearly recognized and these cases all recognize the doctrine laid down by this court in *Raymond v. Chicago Union Traction Co.*, 207 U. S. p. 30-28.

JURISDICTION OF STATE AND FEDERAL COURTS.

The court below in his Honor's opinion, Tr. p. 15, would show that the State court could decide Federal questions as well as the United States Court, and since the appellant is afforded such defense at law through the said Chap. 120, it must make such defense in the said county court. We know State courts can decide Federal questions either in law or equity as well as the Federal courts and must do so in all cases except where by reason of the laws of Congress, the parties have a right to resort to the Federal courts, and in all such cases, the State law must stand aside and the Federal courts will take jurisdiction at the choice of the litigant and decide for itself all the questions in the case and so it is in the case here.

BRIDGE A RAILROAD AND MUST BE ASSESSED BY THE STATE BOARD OF EQUALIZATION.

Complainant's bridge property described in the Tr. p. 2, shows that the property described extends by railroad from 707¾ feet east of the east end of said bridge in the State of Illinois to the east end of the bridge, thence by railroad track along the center line of said bridge 1567 feet to the State line

between Illinois and Iowa, there across said bridge to some distance by railroad to a connection with other railroads in Iowa and complainant claims that this bridge is in fact a railroad with railroad track which can only be assessed by the State Board of Equalization under Section 109, Chap. 120 of the R. S. of Illinois, and this Court has so expressly held as to this identical bridge in *Pittsburg, Cinn. & St. Louis Ry. Co. v. Keokuk & Hamilton Bridge Co.,* 131 U. S. 371-389, where it is said:

"Nor can we have any doubt that the Bridge Company was a railroad company, and the bridge a railroad, within the meaning of these statutes. The principal purpose and use of the bridge was the passage of railroad trains. It was, in substance and effect, a railroad built over water, instead of upon land; and, strictly speaking, it was a railway viaduct rather than a bridge. Bridge Proprietors v. Hoboken Co., 1 Wall. 116."

Now the local assessors in the case at bar assessed this property as "real estate" and more properly as lands under Sections 76 of said Chap. 120 by "Actually view and determine as nearly as practical the fair cash value of each track." Then *Bridges on Border of State,* Sec. 354, *How Assessed,* assessed "As real estate and all provisions of the law for assessment of real estate applies to the assessment and taxation of such bridges", and this is simply valued by view.

There is no way provided for ascertaining the value of this property as railroad property like that provided in Sections 40 to 44 requiring the railroad or other companies "owning, operating railroads" in the State to make sworn returns of the taxable value of such property and by the other provivsions of this law the State Board of Equalization has power to take testimony of persons and experts if necessary to ascertain the real value of such property for taxation. It will readily be seen how important both to the State and taxpayer this power to ascertain the real values of such property to the end that it be taxed on the same per cent values of all other property in the State, and when it is seen the local assessor who probably has no knowledge of values of railroads and railroad property, but only that of his neighbors farms on which he can assess from

view and such knowledge simply guessing at it, we see the wisdom of the law placing the ascertainment of their values in the hands of State Boards with all their knowledge of railroads in the State and means of ascertaining such values. The force of our contention that when railroad property is assessed by a different method and tribunal for the same year and class, "which results an enormous and material discrimination (150 per cent against the Bridge as 30 to 40 per cent other real estate) against complainant's property," complainant has been denied the equal protection of the laws within the meaning of the Fourteenth Amendment to the Constitution of the United States.

REMEDY AT LAW UNDER THE STATE STATUTES.

Even though such statutes may be sufficient under the State law to prevent a resort to equity in such state it does not follow that such a statute would prevent a resort to equity in the Federal Courts.

Remedies at law to test violations of the Federal Constitution do not necessarily oust the equity jurisdiction when such violations arise out of *Special Circumstances.*

Denial of one's constitutional rights under the Fourteenth Amendment to the Federal Constitution a cause for equitable intervention.

Cummings v. Merchant's State Bank, 101 U. S. 153.

Raymond v. Chicago Union Traction Co., 207 U. S. 20, 52 L. ed. 78-88.

Same case, 114 Fed. 557-566.

Greene v. Louisville & I. R. Co., 244 U. S. 499, 61 L. ed. bot. p. 1280-1285.

Union P. R. Co. v. Weld County, 247 U. S. 282, 62 L. ed. pgs. 1110-1116.

United States v. Board, etc. (Apr. 16, 1919), __ U. S. __.
Franklin County v. Nevada Power Co. (May 17, 7920), 264 Fed. 643.
Schaffer v. Caster (March 1, 1920), __ U. S. __.

The case of *Union P. R. Co. v. Weld County* shows how carefully and exacting this Court is where a State law is set up as "remedy at law" preventing injunctive relief and if the statutory remedy is in the least different from the common law remedy or remedies provided by Congress, such State remedy will be denied and not prevent such injunctive relief. The law of Colorado for a time being did provide the remedy for paying taxes and suing back to recovery which was the equivalent of the common law remedy in such cases, but thereafter this State law was modified in some special particulars, that is before the County Commissioners could refund such taxes without "abatement, rebate or refund"; such refund could not be paid until reported to the Colorado tax commissioners for their approval and this was held such modification and change of the existing law as would authorize equitable relief in the Federal Courts when the party by reason of the Federal question or otherwise entitled should apply to the Federal Court, and this Court in the Raymond case which arose under the laws of Illinois reviews the whole case and finds there are no laws in the State of Illinois for the collection of revenue by which a person can pay or tender the taxes under duress or otherwise and sue back for their recovery.

From the foregoing cases it must conclusively appear that complainant's bill stated a cause of action as stated by the Circuit Court in *Chicago Union Traction Co. v. State Board of Equalization*, 114 Fed. 557, 566, which is the case affirmed in the Raymond case where the Circuit Court says:

"We have no doubt that complainants may intrench themselves against this invasion by the writ of injunction. One of the primary grounds of equity jurisdiction is to reach cases involving mistake, fraud or coercion, and the relief necessary to their correction. The cases under consideration come clearly within this jurisdiction. It is incomprehensible that the com-

plainants may not avert this threatened invasion of their rights —that they must first yield and then turn prosecutors in a court of law to recover their loss. The fundamental guarantees of the Constitution must not be thus emasculated."

And we may say from all these authorities that complainant's right to the relief in equity as prayed in its bill of complaint stands unquestioned and that our proposition in our statement that the assessment of appellant's property at about 150 per cent of its full cash value at the time, while other property of the same class and kind with a systematical and intentional disregard of the laws of the State was assessed at about 30 or 40 per cent of such value calls for equitable relief under the Amendment of the Constitution of the United States.

Second—That in assessing complainant's property as real estate when the same is railroad property and railroad track, by local assessors in disregard and in defiance of the laws of the State that such property must be assessed by the State Board of Equalization and at the enormous disparity and discrimination shown in the bill also calls for equitable relief under the Fourteenth Amendment of the Constitution of the United States, and that the holding of your Honors in the numerous cases cited must be held to apply to complainant's cause of action herein and the decree of the court below dismissing complainant's cause must be reversed.

Third—And because the remedy at law providing for in said Chap. 120 does not afford the equitable relief complainant is entitled and said county court has no equitable jurisdiction and cannot remove clouds upon complainant's title by reason of the lien of the tax levies and that a court of equity alone can remove such clouds upon title to complainant's property each and all call for the relief in equity to which complainant is entitled and your Honors will reverse the court below to the end that complainants may have such relief and for proper orders in the premises.

F. T. HUGHES,
Solicitor for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. [redacted]130

KEOKUK AND HAMILTON BRIDGE COMPANY,
APPELLANT,

v.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL., APPELLEES.

REPLY BRIEF OF APPELLEES ON MOTION TO DISMISS.

LEE SEIBENBORN,
State's Attorney,
EARL W. WOOD,
Solicitors for Appellees.

(27,869)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 512.

KEOKUK AND HAMILTON BRIDGE COMPANY,
APPELLANT,

v.

FRED SALM, Jr., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL., APPELLEES.

BRIEF OF APPELLEES.

Statement.

Appellant served upon appellees a motion to advance and submit under rule 32, and asserted in this motion that the only question decided by the lower court was one of jurisdiction. After the service of this motion on appellees a motion to dismiss this appeal for want of jurisdiction in this court was filed by appellees, basing said motion on the fact that the lower court only decided a question of equitable jurisdiction and did not decide a question of its jurisdiction as a

Federal court, and that no proper certificate was filed. The motion of appellant to advance and submit is included in the brief of appellees with motion to dismiss this appeal.

Appellant reverses itself from the position taken in its motion to advance and submit, and now says that its right to appeal directly to this court is based not upon a jurisdictional question, but upon the alleged fact that this is a case that involves the construction or application of the Constitution of the United States. An examination of the record shows that this is not a case involving the construction or application of the Constitution of the United States within the meaning of section 238 of the Judicial Code.

Points and Authorities.

Appellant in its bill claims that the local assessor, the county collector, and the members of the Board of Review of Hancock County, Illinois, have assessed its property on a basis of about 150 per cent (150%) valuation, whereas they have arbitrarily, intentionally, and systematically assessed the property of individuals and corporations at a total taxable value of 40 per cent (40%) of its fair cash value; that by so doing defendants violate the Fourteenth Amendment to the Federal Constitution, in that they are seeking to take its property without due process of law, and are denying it the equal protection of the laws (Printed Record, page 3).

This assertion in the bill is the sole basis of appellant's claim that this case involves the construction and application of the Constitution of the United States. We deny that this assertion in the bill raises the question of constitutional construction or application. The mere fact that property is assessed at different values does not raise this question, and

that is all that the bill avers. In order to raise this question the bill must aver facts showing—

1. That appellant was denied a hearing or not given notice;

2. That the remedies provided by the statutes of the State for review of the assessment before the tax is made final and before appellant's property can be taken have been sought by appellant;

3. That the State, as distinguished from individuals, is violating appellant's rights under the Constitution.

These necessary averments do not appear in the bill.

Appellant in its bill does not show wherein the Fourteenth Amendment to the United States Constitution has been violated. It does not aver or show that it was denied a hearing, or was not given notice, and thus does not show that its property was taken without due process of law. Appellant objects to an assessment of taxes made by the assessors, and the statute of the State provides for a review of the assessment at the option of the person taxed by complaint made to the county collector, the board of review, and the county court. Appellant is thus given three means of having his tax assessment corrected and equalized before his tax is finally fixed and before his property can be taken to pay the tax. Appellant does not aver or show that it sought any of these remedies for review of the assessment provided by the State, and therefore it does not appear that it was denied the equal protection of the law.

Chapter 120, sections 319-320, 329, and 191, Hurd's Revised Statutes of Illinois, 1919.

If a taxpayer be given an opportunity to test the validity of the taxes at any time before it is made final, whether the

proceeding for review takes place before a board having a quasi-judicial character or before a tribunal provided by the State for the purpose of determining such questions, due process is not denied. The bill must show that the remedy provided by the State was sought.

Hodges *v.* Muscatine County, 196 U. S., 261.
Pittsburg, etc., R. Co. *v.* Board of Public Works, 172 U. S., 47.

In matters of taxation it is sufficient that the party assessed should have an opportunity to be heard, either before a judicial tribunal or before a board of assessment, at some stage of the proceeding.

Winona, etc., Land Co. *v.* Minnesota, 159 U. S., 537.
Wurts *v.* Hoagland, 114 U. S., 614.
Weyerhauser *v.* Minnesota, 176 U. S., 554.
Security Trust, etc., Co. *v.* Lexington, 203 U. S., 323.
Palmer *v.* McMahon, 133 U. S., 669.

The statute of the State of Illinois provides that after the assessor has assessed property—

> "On complaint in writing that any property described in such complaint is incorrectly assessed, the board (of review) shall review the assessment, and correct the same, as shall appear to be just."

There is no averment in the bill that complainant has sought or exhausted this remedy, and it therefore does not show that the Fourteenth Amendment to the Constitution of the United States has been violated.

Chapter 120, section 329, Hurd's Revised Statutes, 1917.

The statute of the State of Illinois provides for a review of assessments before the county supervisor of assessments and county assessor as follows:

> "The office of the board of assessors, the county supervisor of assessments, and the county assessor shall be open all the year during business hours to hear or receive complaints or suggestions that real property has not been assessed at proper valuation." * * *
>
> "The supervisor of assessments shall assess, make such changes or alterations in the assessment of property as though originally made, and in making such changes in valuation as returned by the township assessor such changes shall be noted in a column provided therefor, and no change shall be made in the original figures." * * *.
>
> Chapter 120, sections 319-320, Hurd's Revised Statutes of Illinois, 1919.

The statute of the State of Illinois with reference to appellant's bridge provides:

> "That all bridge structures across any navigable streams forming the boundary line between the State of Illinois and any other State shall be assessed by the township or other assessor in the county or township where the same is located, as real estate; and all provisions of law relating to the assessment and taxation of real estate shall apply to the assessment and taxation of such bridges." * * *
>
> Chapter 120, section 354, Hurd's Revised Statutes of Illinois, 1919.

The statute of Illinois with reference to delinquent taxes provides that in the county court—

> "The court shall examine said lists, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of said land or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be."

There is no averment in the bill that this remedy was sought or exhausted, and it therefore does not show that the Fourteenth Amendment to the Constitution of the United States has been violated.

> Chapter 120, section 191, Hurd's Revised Statutes, 1919.

The presumption is that a tax is assessed properly, and to overcome this presumption the bill must show that the objection to the assessment has not been waived through the neglect or choice of the complainant in not appearing before the board of review and in not filing its objection in the county court.

> Merchants & M. National Bank *v.* Pa., 167 U. S., 461.
> Chicago & Northwestern R. Co. *v.* People, 174 Ill., 80.
> Cleveland, C., C. & St. L. R. Co. *v.* People, 212 Ill., 351.
> Spencer & Gardiner *v.* People, 68 Ill., 510.
> Humphrey *et al. v.* Nelson, 115 Ill., 51.
> People *v.* Lots in Ashley, 122 Ill., 298.

An allegation in a bill in equity that the cause of action was one arising under the Constitution and laws of the

United States does not suffice, since it is well settled that a mere formal statement to that effect is not enough.

239 U. S., 144; 36 S. Ct., 97; 60 U. S. (L. Ed.), 186.

The bill must aver sufficient facts to show, not as a matter of mere inference or argument, but clearly and distinctly, that the suit involves a construction or application of the Federal Constitution.

Muse *v.* Arlington Hotel Co., 168 U. S., 430; 18 S. Ct., 109; 42 U. S. (L. Ed.), 531.

Hull *v.* Barr, 234 U. S., 712; 34 S. Ct., 892; 58 U. S. (L. Ed.), 155.

Sagaman *v.* U. S., 249 U. S., 182; 39 S. Ct., 191; 63 U. S. (L. Ed.).

Cosmopolitan Min. Co. *v.* Walsh, 193 U. S., 460; 24 S. Ct., 489; 48 U. S. (L. Ed.), 749.

See also—

Keokuk & Hamilton Bridge Co. *v.* People, 173 U. S., 702; 175 U. S., 632.

The act of the local assessor in making the assessment when no remedy is sought through the board of review or the county court is not the act of the State, within the meaning of the Fourteenth Amendment to the Federal Constitution. For this reason the bill must aver that these remedies have been sought before a Federal question can be said to have been raised by the bill. This was not done in the case at bar.

Raymond and Green Cases Distinguished.

Appellant relies upon Raymond *v.* Chicago Union Traction Company, 207 U. S., 20, and Green *v.* Louisville & I. R. Co., 244 U. S., 499. These cases are not in point. In both of these cases sufficient facts are averred to show that appellant was denied a hearing and not given notice. No such averments appear in appellant's bill in the case at bar. In both of these cases the State by statute had not provided a method of review of the tax objected to before it was made final, as it has done in the case at bar.

In the Raymond case the Supreme Court of the State by mandamus compelled the board of equalization to assess the tax to which objection is made. The State provided no means of review of this assessment. Objectors were not made parties to the mandamus proceeding or given notice.

In the Green case complaint is made to the assessment of the State board of valuation. The State provided no means of review of its assessment. Objectors were denied a hearing and the benefit of equalization.

Respectfully submitted,

LEE SEIBENBORN,
State's Attorney,
EARL W. WOOD,
Solicitors for Appellees.

A copy of the above reply brief received and service of same acknowledged this 17th day of February, 1921.

F. T. HUGHES,
Solicitor for Appellant.

Supreme Court of the United States

October Term 1921

NO. 130

Keokuk and Hamilton Bridge Company,
v. Appellant,
Fred Salm, Jr., Elmer F. Dennis, William E. Miller, et al., Applelees.

APPELLEE'S BRIEF.

Earl W. Wood,
Solicitor for Appellees.

Supreme Court of the United States

October Term 1921

NO. 130

Keokuk and Hamilton Bridge Company,
v. Appellant,
Fred Salm, Jr., Elmer F. Dennis, William E. Miller, et al., Applelees.

SUBJECT INDEX AND CASES CITED.

Supreme Court of the United States

October Term 1921

NO. 130

Keokuk and Hamilton Bridge Company,

v. Appellant,

Fred Salm, Jr., Elmer F. Dennis, William E. Miller, et al., Applelees.

APPELLEE'S BRIEF.

STATEMENT.

This is a suit in equity instituted by Appellant, Keokuk and Hamilton Bridge Company, in the District Court of the United States of the Southern District of Illinois, against Appellees, individually and in their respective official capacities as County Treasurer, Local Assessor, County Clerk and members of the Board of Review of Hancock County, Illinois. The bill seeks to restrain the collection of taxes assessed against that portion of Appellant's bridge situated in Hancock County, Illinois, for the year 1918. The District Court dismissed Appellant's bill of complaint in accordance with the motion of Appellees to dismiss said bill and Appellant prosecutes this ap-

peal. The Keokuk and Hamilton Bridge Company, a corporation, is the owner of a bridge across the Mississippi river from Hamilton, Illinois, to Keokuk, Iowa. That portion of said bridge situated in Hancock County, Illinois, was assessed by the Board of Review of said Hancock County, at $100,000.00, as the equalized assessed value thereof, this being, under the laws of the State of Illinois, one-third of the fair cash value of said property.

It is alleged by Appellant in its bill that said property was assessed on a basis of about 150% valuation and that *other classes* of property of similar character and value were assessed at about 40% of the fair cash value. There is no allegation in the bill that other property in the *same class* was assessed on a different basis from Appellant's property. Appellant insists, however, that its property is being taken without due process of law and that it is denied the equal protection of the laws, within the meaning of the Fourteenth Amendment to the Constitution of the United States. Appellant also alleges that its property is not land but railroad property and that under the laws of Illinois, it should have been assessed by the State Board of Equalization and not by Appellees as the local taxing bodies of Hancock County.

Appellees entered a motion in the District Court to dismiss the bill and set up ten reasons why the bill, upon its face, is insufficient. (See page 7 of the printed transcript of record.)

The District Court allowed Appellee's motion to dismiss the bill and refused to grant an injunction and held that Appellant had a plain, adequate and complete remedy at law before the Board of Review and by making objection to any judgment being entered for the taxes in the County Court of said Hancock County, Illinois. (See memorandum views of the Court, page 11 of the printed transcript of the record.)

APPELLANT HAS AN ADEQUATE REMEDY AT LAW.

A suit in equity cannot be maintained in the Federal Court where there is an adequate remedy at law provided by the statutes of the state.

Sec. 267 Judicial Code; 36 Stat. L. 1163; Fed Stat. Ann. 2nd Ed., Vol. 5. p. 989, Sec. 267.

Singer Sewing Machine Co., v. Benedict, 229 U. S. 481.

Shelton v. Platt, 139 U. S. 591.

The laws of the State of Illinois furnish an adequate remedy at law.

1. The Statute of the State of Illinois, with reference to Appellant's bridge, provides:

"That all bridge structures across any navigable streams forming the boundary line between the State of Illinois and any other state shall be assessed by the township or other assessor in the county or township where the same is located, as real estate; and all provisions of law relating to the assessment and taxation of real estate shall apply to the assessment and taxation of such bridges. * * *" Chapter 120 section 354, Hurd's Revised Statutes of Illinois, 1917.

2. The Statute of the State of Illinois provides for a review of assessments before the county supervisor of assessments and county assessor, as follows:

"The office of the board of assessors, the county supervisor of assessments, and the county assessor shall be open all the year during buiness hours to hear and receive complaints or suggestions that real property has not been assessed at proper valuation." * * * Chapter 120, sections 319-320 Hurd's Revised Statutes of Illinois, 1917.

3. The Statute of the State of Illinois provides that, after the assessor has made an assessment,

then, on complaint in writing, that any property described in such complaint is incorrectly assessed, the Board of Review shall review the assessment and correct the same as shall appear to be just. This is an adequate remedy at law and Appellant fails to allege that it has exhausted this remedy.

Par. four, Sec. 329, Chapter 120, Hurd's Revised Statutes of Illinois, 1917, is in part as follows:

"On complaint in writing that any property described in such complaint is incorrectly assessed, the board shall review the assessment, and correct the same, as shall appear to be just."

4. The Statute of the State of Illinois provides that if defense, (specifying in writing the particular cause of objection) be offered by any person interested in the entry of judgment against the property contained in the delinquent list, the county court shall hear and determine the matter in a summary manner without pleadings, and shall pronounce judgment as the right of the case may be. The statute further provided for an appeal from the judgment of the County Court direct to the Supreme Court. This is an adequate remedy at law and appellant does not allege that it has exhausted this remedy.

Sections 191-192, Chapter 120, Hurd's Revised Statutes of Illinois, 1917, are, in part, as follows:

"191. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be." * * *

"192. Appeals from the judgment of the court may be taken during the same term to the Supreme Court on the party praying an appeal executing a bond to the People of the State of Illinois, in some reasonable amount to be fixed by the court, conditioned that the appellant will prosecute his said appeal with effect, and will pay the amount of any tax assessment and cost which may finally be adjudged against the real estate involved in the appeal by any court having jurisdiction of the cause." * * *

THE FOURTEENTH AMENDMENT WAS NOT VIOLATED.

Appellant in its bill does not show wherein the Fourteenth Amendment to the Constitution of the United States was violated. It does not aver or show

that it complained to the local assessor, the board of review, or that it made objection in the county court, to have the alleged improper assessment corrected. It does not aver or show that it was denied a hearing by any of the taxing bodies, or that it was not given notice of its assessment, and thus it fails to show that its property was taken without due process of law.

If a taxpayer be given an opportunity to test the validity of the tax at any time before it is made final, whether the proceedings for review take place before a board having a quasi-judicial character, or before a tribunal provided by the state for the purpose of determining such questions, due process of law is not denied.

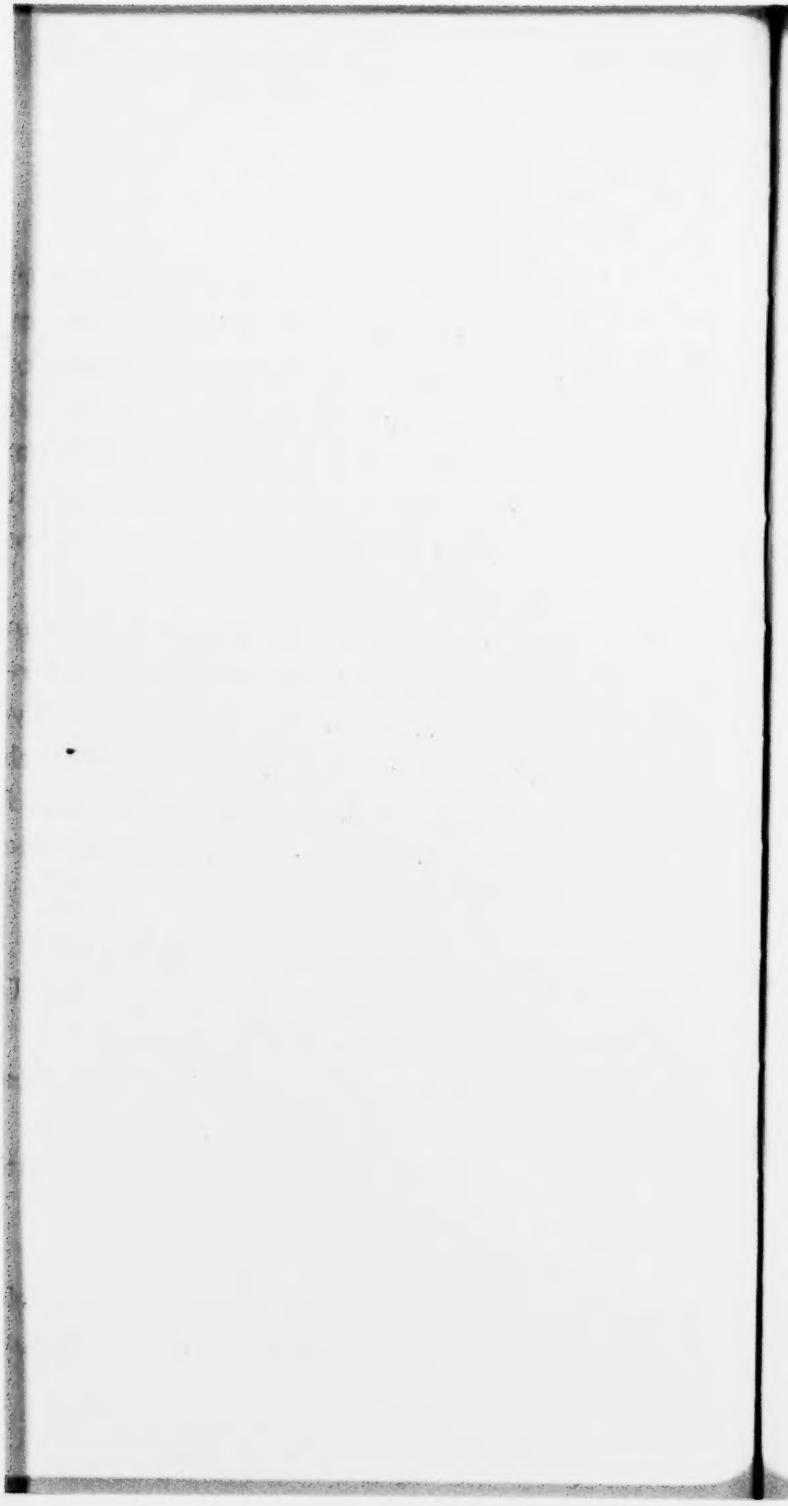
Hodge v. Muscatine County, 196 U. S. 281.

Pittsburgh etc., R. Co., v. Board of Public Works, 172 U. S. 32.

New York v. New York State Board of Tax Comrs. 199 U. S. 48.

Susman v. Board of Public Education, 228 Fed. 217.

In matters of taxation, it is sufficient that the party assessed should have an opportunity to be



heard either before a tribunal, or before a board of assessment, at some stage of the proceeding.

Pittsburg etc., R. Co., v. Board of Public Works, 172 U. S. 32.

Winona, etc., Land Co., v. Minnesota, 159 U. S. 537.

Wurts v. Hoagland, 114 U. S. 614.

Weyerhauser v. Minnesota, 176 U. S. 554.

Security Trust, etc., Co., v. Lexington, 203 U. S. 323.

Palmer v. McMahon, 133 U. S. 669.

The presumption is that a tax is assessed properly, and to overcome this presumption, the bill must show that the objection to the assessment has not been waived through neglect or choice of the complainant in not appearing before the board of review and in not filing its objection in the County Court.

Chicago & Northwestern R. Co., v. People, 174 Ill., 80.

Cleveland C. C. & St. L. R. Co., v. People, 212 Ill., 551.

Spencer & Gardiner v. People, 68 Ill., 510.

Merchants and M. National Bank v. Pa. 167 U. S. 461.

Humphrey et al., v. Nelson, 115 Ill., 51.

People v. Lots in Ashley, 122 Ill., 298.

The bill fails to allege that other property of the *same class* with that of appellant was assessed at a lower valuation. It is only when property of the *same class* is assessed at different rates, that one is denied the equal protection of the laws under the Fourteenth Amendment. Property of different classes may be assessed at different rates.

Michigan C. R. Co., v. Powers 201 U. S. at p. 293, and cases there cited.

Not only does Appellant's bill fail to aver that other property of the *same class* was assessed at a lower valuation, but it specifically avers, as follows:

"Whereas defendants have intentionally, systematically and persistently assessed *other classes* of property of similar character and value at about forty per cent of such fair cash value and thereby is and has deprived complainant of the equal protection of the laws and taking complainant's property without due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States." (See page 4 of printed transcript of record.)

An allegation in the bill that the cause of action was a cause arising under the Constitution and laws

of the United States does not suffice, since it is well settled that a mere formal statement to that effect is not enough.

Peorge W. Norton etc., v. Robert B. Whiteside and Andrew J. Tallas, 239 U. S. 144; 36 S. Ct., 97; 60 U. S. (L. Ed.), 186.

The bill must aver sufficient facts to show, not as a matter of mere inference or argument, but clearly and distinctly, that the suit involves a construction or application of the Federal Constitution.

Muse v. Arlington Hotel Co., 168 U. S. 430; 18 S. Ct., 109; 42 U. S. (L. Ed.), 531.

Hull v. Barr, 234 U. S. 712; 34 S. Ct., 892; 58 U. S. (L. Ed.), 155.

Sugarman v. U. S. 249, U. S. 182: 39 S. Ct. 191; 63 U. S. (L. Ed.), 551.

Cosmopolitan Min. Co., v. Walsh, 193 U. S. 460; 24 S. Ct. 489; 48 U. S. (L. Ed.), 749.

Keokuk and Hamilton Bridge Co., v. People 173 U. S. 702; 175 U. S. 626.

The act of the local assessor in making the assessment, when no remedy is sought through the board of review or the county court is not the act of the state within the meaning of the Fourteenth

Amendment to the Constitution of the United States. For this reason, the bill must aver that these remedies have been sought, before a Federal question can be said to have been raised by the bill. This was not done in the case at bar.

Appellant's bill avers that the acts of appellees are inviolation of the constitution and laws of the State of Illinois. Therefore, it admits in its bill that its property is not being taken without due process of law and that it is not being denied the equal protection of the laws by the state, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

This court has so held in the case of Barney v. New York, 193 U. S. 430.

The case of Raymond v. Chicago Union Traction Company, 207 U. S. 20, relied upon by Appellant, is not in point and is easily distinguished from the case at bar in the following main particulars:

(a) There are many equitable grounds of jurisdiction averred in the bill in the Raymond case that

do not appear in the case at bar, and the Court holds that all of them combined and taken together give jurisdiction.

(b) In the Raymond case the inequality was between properties of the same class.

(c) In the Raymond case there was no appeal from the decision of the State Board, and the act of the Board could, therefore, be said to be the complete act of the state within the meaning of the United States Constitution. In the case at bar, the action of the local assessor could be reviewed before the Board of Review, and the action of the Board of Review could be reviewed on objections filed in the County Court, which relief is not shown in the bill to have been sought by the complainant.

(d) In the Raymond case, the matter in dispute had been taken to the Supreme Court of the State of Illinois, and it was this decision of the state court which the State Board was forced to obey that made the action of the Board the act of the state, within the meaning of the Fourteenth Amendment to the United States Constitution. In the case at bar, complainant avers that the constitution and laws of the State of Illinois forbids the assessment that was made, which makes this case come under the

rule announced in Barney v. New York, 193 U. S. 430.

(c) In the Raymond case, it appears from the averments in the bill that the party objecting to the taxes had no notice or opportunity to be heard. These are not the facts in the case at bar, and they are not averred to be the facts in the bill.

The case of Green v. Louisville and I. R. Co., 244 U. S. 499, also relied upon by Appellant is not in point. In that case, sufficient facts were averred to show that the company was denied a hearing and was not given notice. No such averments appear in Appellant's bill in the case at bar. In the Green case the State, by statute, had not provided a method of review of the tax objected to before it was made final, as it has done in the case at bar.

APPELLANT'S BILL IS OTHERWISE DEFECTIVE.

1. Appellant, in its bill, does not offer to do equity by paying the tax justly due.

Equity will not grant an injunction to restrain the collection, even of an illegal tax, without the payment on the part of the taxpayer of the amount of the

tax fairly and equitably due. Appellant has not averred a willingness to pay such tax.

German National Bank v. Kimbal, 103 U. E. 732.

Raymond v. Chicago Union Traction Co., 207 U. S. 38.

People's National Bank v. Marye, 191 U. S. 272.

State Railway Tax Cases, 92 U. S. 616.

2. Appellant does not aver in its bill any ground of jurisdiction in equity. The only ground upon which it seeks equitable relief is that a tax judgment will cloud the title to its property.

If the tax assessment is in violation of the Constitution of the United States, as averred in the bill, it is void, and not a cloud upon the title of the preperty of the complainant entitling it to relief in equity.

The assertion of unconstitutionality cannot be resorted to, to maintain Federal jurisdiction as constituting a cloud.

Devine v. Los Angeles, 202 U. S. 313.

Hannewinkle v. Georgetown, 15 Wall 547; 21 U. S. 331.

"Assuming the tax to be void, equity will not restrain by injunction its collection, unless there be some other ground for equitable interposition."

Raymond v. Chicago Union Traction Co., 207 U. S. 39.
Shelton v. Platt, 139 U. S. 591.
Allen v. Pullman Palace Car Co., 139 U. S. 568.
Pacific Express Co., v. Seibert, 142 U. S. 339.

It does not aver in its bill that it has any lands, but claims that its property is not lands. This renders the bill fatally defective on the theory that Appellant's title will be clouded.

The bill avers that a judgment will be obtained and the property sold to its irreparable injury. This does not give equitable jurisdiction and, if it did, not enough facts are averred showing that judgment will be obtained or irreparable injury result. Before judgment can be rendered, complainant can obtain relief by filing its objections in the County Court of Hancock County, Illinois, to the alleged improper assessment. It is not averred in the bill that this has been done.

3. As the jurisdiction of the United States

courts is limited in the sense that they have no other jurisdiction than that conferred by the Constitution and laws of the United States, the presumption is that a case is without their jurisdiction, unless the contrary affirmatively appears in the record, and it is not sufficient that jurisdiction may be inferred argumentatively from the averments in the pleadings, but the averments should be positive, or the case will be dismissed at any stage of the proceedings.

Brown v. Keene, 8 Peters 110; 8 (L. Ed.) U. S. 885.

Sheldon v. Dill, 8th How. 441; 12th (L. Ed.) U. S. 1147.

Shade v. Northern Pac. Ry. Co., 206 Fed. 353.

APPELLANT'S BRIDGE IS NOT A RAILROAD.

Appellant urges in its bill that its property was taxed by the local assessor, when it should have been taxed by the State Board of Equalization as railroad track. It was assessed as a bridge under Sec. 354, Chapter 120, Hurd's Revised Statutes of Illinois, 1917, hereinbefore referred to. That statute provides that all bridge structures across any navigable stream forming the boundary line between the State of Illinois and any other state shall be assessed by the local assessor. This bridge falls within the provis-

ions of that statute and it was properly assessed by the local assessor. (See cases cited by the District Court in its opinion on page 13 of the printed transcript of record.)

In the recent case between the People of the State of Illinois, and this bridge company, involving the taxes for the year 1917, the Supreme Court of the State of Illinois held that this bridge was not railroad and was lawfully assessed by the local assessor as real estate, and was not to be assessed by the State Board of Equalization as a railroad.

Keokuk and Hamilton Bridge Co., v. People, 287 Ill., 246.

The Supreme Court of the State of Illinois has held that a bridge must be a part of a railroad system owned by a railroad company before it can be assessed by the State Board of Equalization and the bill in this case does not aver that the bridge is a part of a railroad system owned by Appellant. It avers that the railroads that use the bridge are owned by other companies.

C. & A. R. R. Co., v. People, 152 Ill., 408.
Anderson v. C. B. & Q. R. R. Co., 117 Ill., 26.
People v. A. T. & S. Co., 206 Ill. 253.

The United States Courts are bound to accept the construction that the highest state court has placed upon the revenue laws of the state, if such construction does not violate the Constitution of the United States.

Gatewood v. North Carolina, 203 U. S. 531.
Atchison etc., R. R. Co., v. Matthews, 174 U. S. 100.

The laws of the State of Illinois clearly show that Appellant was properly assessed as a bridge by the local assessor. The only property that Appellant claims to own is a bridge across the Mississippi river about a mile long, between the cities of Hamilton, Illinois, and Keokuk, Iowa. It does not own or claim to own any property beyond the limits of this bridge.

The bill avers that the bridge of Appellant was constructed in 1868 and 1869 under Act of Congress approved July 25, 1866. (This Statute is found in Vol. 14, U. S. Statutes at Large, pp. 244, 245, 246.)

The bill further avers that appellant was formed by the union of two corporations, one being the Hancock County Bridge Company, chartered by special act of the Illinois Legislature, and the other be-

ing an Iowa corporation. An examination of the language used in these acts, under which Appellant derives its corporate powers, shows it to be a bridge company and not a railroad company, and that its property is not a part of a railroad system owned by it. The Act of Congress and the Act of the State of Illinois expressly authorize the construction of a bridge and not a railroad, and the incorporation of a bridge and not a bridge company. (The Illinois Statute just referred to is found in Vol. 1, Private Laws of Illinois, 1865. Pages 180-181.)

The case of the Pittsburgh, Cincinnati and St. Louis Railway Company, v. The Keokuk and Hamilton Bridge Company—The Pennsylvania Railroad Company v. The Keokuk and Hamilton Bridge Company, 131 U. S. 371, relied upon by Appellant says it is a railroad company within the meaning of a Pennsylvania Statute. The case at bar, however, involves the construction of an Illinois Statute, and the above Illinois cases holding complainant to be a bridge company and not a railroad company, under the revenue laws of the State of Illinois are controlling.

The following cases in the Supreme Court of the State of Illinois and the Supreme Court of the

United States, wherein taxes against Appellant's bridge have been involved, throw light upon many of the questions involved in this appeal.

The People v. K. and H. Bridge Co., 287 Ill., 246.

Keokuk and Hamilton Bridge Co., v. People, 295 Ill., 176.

Keokuk and Hamilton Bridge Co. v. People, 161 Ill., 514.

Keokuk and Hamilton Bridge Co., v. People, 161 Ill., 132.

Keokuk and Hamilton Bridge Company v. Illinois, 175 U. S. 626.

Keokuk and Hamilton Bridge Company v. The People of the State of Illinois, 145 Ill., 596.

The Keokuk and Hamilton Bridge Company v. The People 167 Ill. 15.

Keokuk and Hamilton Bridge Company, v. The People of the State of Illinois, 173 U. S. 702.

MOTION TO DISMISS THE APPEAL.

Appellees hereby renew their motion to dismiss this appeal, heretofore filed herein, and insist that the appeal in this case should have been taken to the Circuit Court of Appeals and that this court has no jurisdiction. There is no question of the jurisdiction

of the District Court as a *Federal Court* involved, but the sole question is as to whether or not there is any equity on the face of the bill. The construction of the Fourteenth Amendment to the United States Constitution is not involved.

In addition to the cases herein cited we would refer the Court to the cases cited in our previous brief heretofore filed under the same cover with the motion to dismiss and which is entitled, "Motion to dismiss and brief on motion."

Appellees respectfully ask that the appeal be dismissed, or that if the Court should feel that the appeal should not be dismissed, that then the order and judgment of the District Court be affirmed.

Respectfully submitted,

EARL W. WOOD,
Solicitor for Appellees.

Receipt of Appellee's brief in the above entitled cause is hereby acknowledged this 23rd day of January, 1922.

F. T. HUGHES,
Solicitor for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

No. [redacted]130

KEOKUK & HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS,
WILLIAM E. MILLER, ET AL.,
APPELLEES.

APPELLANT'S BRIEF IN REPLY TO APPELLEES' BRIEF ON MOTION TO DISMISS.

F. T. HUGHES,
Solicitor for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

No. 512.

KEOKUK & HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS,
WILLIAM E. MILLER, ET AL.,
APPELLEES.

APPELLANT'S BRIEF IN REPLY TO APPELLEES' BRIEF ON MOTION TO DISMISS.

STATEMENT.

We have been served with what appellees style reply brief on motion to dismiss and in answer to appellant's motion to advance and submit the cause in connection with appellee's motion to dismiss the appeal. We hardly feel it necessary to discuss the points referred to, for in any event, such points could have no force or effect on appellant's right to the equitable relief sought in its bill of complaint. They say—

1. That before appellant can resort to equitable proceedings, he must have exhausted the statutory remedies provided in Sec. 329, Chap. 120, Hurd's R. S. of Illinois, which provides on complainant in writing that any property described in such complaint is incorrectly assessed, the Board shall review the assessment and correct the same as shall appear to be just,

and it is claimed that complainant herein we take it by not going before this Board with its complaint forever lost its right to complain that its property was assessed at more than its actual cash value while all other property of a similar class was assessed at 30 to 40 per cent value. No such construction can be put on this law because the act of these assessors and Board of Review cannot deprive the complainant of its constitutional rights under the 14th Amendment to the Federal Constitution and when a party claims a right under the laws of Congress and Constitution of the United States, he must plead that right before some court of competent jurisdiction to hear and determine such questions and be denied and where the party would have a right of appeal or error if need be to the Federal Supreme Court, and besides this going before this Board is not even a prerequisite to such right, because you can raise these questions for the first time in the "County Court" in the suit by collector for judgment on the tax list, and this is the first place you could plead or raise the Federal question that in the assessing of appellant's property you had been denied the equal protection of the laws under the 14th Amendment to th Federal Constitution. It is expressly provided in said Sec. 191 of the Chap. 120 for raising all such questions and this is the holding of the courts in such cases of other State Courts under similar tax laws.

In Re Koochiching County Taxes, 177 N. W. (Minn.) 940, where the question was directly raised and the Court said:

"The further contention that to entitle the property owner to the defense of overvaluation he must first apply for relief to the board of equalization is not sound. * * * Here the statute expressly and in so many words provides that the defense of overvaluation may be interposed when the proceeding is before the court on the application for judgment, which is long after the proceedings have passed the authority of the board of equalization or other officers charged with like duties. No conditions are imposed upon the right to interpose the defense, and no provision of these statute requires that application be first made to the equalization officers. The court can impose no such condition."

So if we are not precluded from raising these questions by not going before the Board of Review in the State Court, most certainly we are not so precluded from going into the Federal Court, but conceding in the least that in any event we could not go into the Federal Court in the first instance, we have so fully shown that it is the law of this Court that,—

"A State cannot tie up a citizen of another State, having property rights within its territory invaded by unauthorized acts of its officers, to suits for redress in its own courts."

Smyth v. Ames, 169 U. S. 466, 517.

And as said in *Chicago Union Traction Company v. State Board of Equaliation*, 114 Fed. 557, 566, which is the case affirmed in the Raymond case, where the Circuit Court says:

"We have no doubt that complainants may intrench themselves against this invasion by the writ of injunction. It is incomprehensible that the complainants may not avert this threatened invasion of their rights—that they must first yield and then turn prosecutors in a court of law to recover their loss. The fundamental guarantees of the Constitution must not be thus emasculated."

The contention of the appellees would be that under this Chap. 120, Sec. 319-329, Hurd's R. S. of Illinois, the taxpayer, where by reason of the Federal questions or diverse citizenship has a right to resort to the Federal Courts of Equity to prevent this threatened invasion, he must still take notice at his peril, that the assessors of the township have assessed one class of property at 30 to 40 per cent of its value and another including the appellant's bridge and railroad property at 150 per cent of its value and urge these township assessors, who may have no knowledge whatever of one's constitutional rights to set aside the entire township assessment as real property and raise it to 150 per cent of its value or lower appellant's property to 30 or 40 per cent of its value and with no means whatever of compelling these officers to perform their duty but must in a sense "beg them" to do right and if they don't, then he must go again to the Board of Review consisting of two or

three of these assessors and clerks and try out his plea on them and then they would say, you must make your defense in the County Court and without any or all of these efforts, appellant could ask the assistance of a Court of Equity to restrain these officials from their acts and threatened invasions of appellant's rights. These local assessors should consult the cousel for the State, rather than call upon the taxpayer or its counsel to direct and compel them to refrain from such illegal acts. Appellant can stand upon its own constitutional rights and by one act of injunction, stop all these proceedings and see that its property is fairly assessed and it pays such equal and just taxes as other taxpayers in the same class may pay. We have no doubt of the sufficiency of our bill of complaint to warrant the relief prayed.

Appellees' counsel says,—

"The bill must show that the remedy provided by the State was sought."

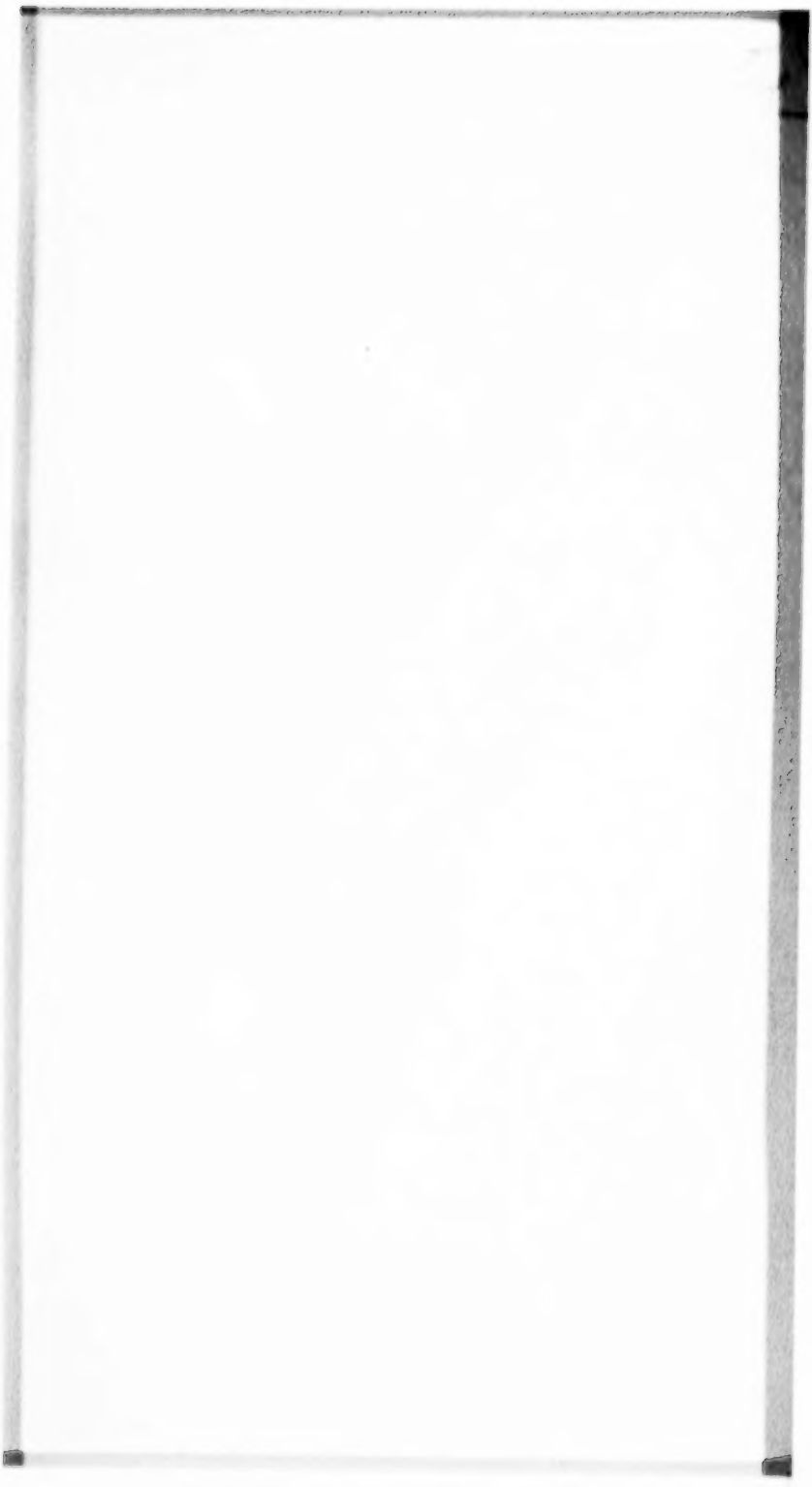
Citing *Hodges v. Muscatine County*, 196 U. S. 261.
Pittsburg Etc. R. Co. v. Board of Public Works, 172 U. S. 47.

Neither of these cases supports the contention. The Hodge case was an action at law on error from the State Court and the only question was what is due process. The Pittsburg case was bill in equity and the Court laid down the principles that ordinarily the law must be pursued and that when one resorts to equity, there must be some special circumstances and this Court has said so many times that violations of one's constitutional rights and where no provision is made for tendering or paying the taxes and having the tax collectors or the municipality held liable in a suit to recover back such illegal taxes and whereas in the instant case no such law exists and when the taxes are paid the collector turns them to the Treasurer and he disburses to the proper owner of same and the taxpayer would have to bring a number of suits and as to that part of the tax going to the State no suit could be maintained there would be irreparable loss and where the tax levied becomes a lien and a cloud upon

the property and the County Court in the instant case has no equitable powers to remove such clouds, your Honors will find that in every case the appellant has made out its case and is entitled to the relief prayed and the decree of the court below must be reversed.

Appellee files some typewritten motions to strike for ambiguity, etc. We hardly feel this Court will concern itself with such questions. The appellee moved to dismiss appellant's appeal and appellant took issue and asks the Court to determine the whole case, and why not? It simply makes one case out of two.

F. T. Hughes,
Solicitor for Appellant.



Affirmed.

KEOKUK & HAMILTON BRIDGE COMPANY *v.* SALM ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

No. 130. Argued January 27, 1922.—Decided February 27, 1922.

1. A bridge owned by a bridge company and used for railroad purposes is assessable in Illinois as real estate by the assessor of the county in which it lies and not by the State Board of Equalization as a railroad. P. 123.
2. A bill in the District Court to enjoin enforcement of a state tax on real property, as based on a discriminatory overvaluation, which fails to show that the plaintiff availed himself of presumably adequate legal remedies afforded by the state law, or, the amount being the only matter in dispute, that he paid or tendered the amount confessedly due, and which does not offer to pay such amount as the court may find to be equitably due, should be dismissed for want of equity. P. 124.

Affirmed.

APPEAL from a decree of the District Court dismissing the bill, for want of equity, in a suit brought by the ap-

pellant to restrain the appellees, county officials, from collecting a tax on the appellant's bridge, alleged to discriminate, in violation of the Fourteenth Amendment.

Mr. F. T. Hughes for appellant.

Mr. Lee Siebenborn and *Mr. Clifton J. O'Hara*, with whom *Mr. Earl W. Wood* was on the briefs, for appellees.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

The Keokuk & Hamilton Bridge Company, an Illinois corporation, owns a bridge across the Mississippi River. That part of it which lies within the State of Illinois was assessed by the county assessors for purposes of taxation as real estate and was valued at $100,000. To prevent collection of the tax the company brought, in the federal court for Southern Illinois, this suit for an injunction against the county treasurer and other state officials. It is claimed that the tax is void; first, because the bridge is a railroad and as such is assessable only by the State Board of Equalization; secondly, because the property was deliberately assessed at one hundred and fifty per cent. of its actual value, whereas the property of other corporations and individuals was assessed at only forty per cent. of its value; and that, thus, the company is deprived of property without due process of law and is denied equal protection of the laws in violation of the Fourteenth Amendment. A motion to dismiss was sustained by the District Court on the ground that the complainant has a plain, adequate and complete remedy at law. The case comes here on appeal under § 238 of the Judicial Code because of the constitutional question raised. That such property is assessable by the county officials as real estate and not by the State Board of Equalization as a railroad was settled by *People* v.

Keokuk & Hamilton Bridge Co., 287 Ill. 246; 295 Ill. 176, 181.[1] Whether the bill sets forth a case for equitable relief is the only question requiring consideration.

Since the appellant asserted a claim arising under the Federal Constitution, the District Court had jurisdiction although there was no diversity of citizenship. Discrimination in taxation effected by systematic inequality of assessment may violate the Fourteenth Amendment. *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 502. But the bill failed to show that plaintiff was being deprived of property without due process of law or was being denied equal protection of the laws or that there was any danger that it would be. Compare *Wells, Fargo & Co.* v. *Nevada*, 248 U. S. 165, 168. The law of Illinois affords ample opportunity to question the amount and the validity of an assessment both before administrative tribunals and in its courts.

The provisions relating to the assessment and taxation of real estate apply to the assessment and taxation of bridge structures like that of the appellant. Hurd's Revised Statutes of Illinois, 1919, c. 120, § 354. Every such assessment made by the county assessors is subject to revision by them. §§ 319, 320. Moreover, upon complaint in writing that an assessment is incorrect, a board of review is required to give a hearing, and to correct the assessment " as shall appear to be just." § 329; *Standard Oil Co.* v. *Magee*, 191 Ill. 84. Payment of taxes as finally assessed and extended against real estate is enforced, in the first instance, not by distraint or levy, but by legal proceedings. §§ 185–193. An application is made by the collector to the county court for judgment against the property. Compare *Keokuk & Hamilton Bridge Co.* v. *People*, 145 Ill. 596; 161 Ill. 514; 167 Ill. 15; 176 Ill. 267.

[1] That so much of the bridge as lies within the State of Illinois is taxable there, although used in interstate commerce, was held in *Keokuk & Hamilton Bridge Co.* v. *Illinois*, 175 U. S. 626.

The proceeding in the county court is a civil suit for the collection of a debt. *People* v. *St. Louis Merchants Bridge Co.*, 282 Ill. 408. The owner may appear and defend on any legal ground; among others, that the assessment was deliberately or fraudulently discriminatory and that, hence, the tax is void. *People* v. *Keokuk & Hamilton Bridge Co.*, 287 Ill. 246; 295 Ill. 176. From the judgment of the county court an appeal may be taken to the Supreme Court of the State upon giving a bond to pay the amount of the assessment and costs; and the appeal will operate as a supersedeas if the appellant deposits with the county collector an amount of money equal to the amount of the judgment and costs. If upon final hearing judgment for sale of the lands for taxes is refused, the deposit is returned by the collector to the appellant. § 192. Moreover, where it is claimed that a tax is void because of overvaluation which is fraudulently discriminatory, the courts of the State will grant relief in equity, if the plaintiff has sought correction from the board of review and failed to secure redress. *Sanitary District* v. *Young*, 285 Ill. 351, 367. Here the alleged invalidity consists wholly in discriminatory overvaluation; and, so far as appears, appellant did not even apply to the board of review to correct the assessment. There is thus no basis for the contention that resort to a suit such as this was necessary to prevent, either a sale for an illegal tax creating a cloud upon title, or multiplicity of suits to recover back the tax, or other irreparable injury. See *Singer Sewing Machine Co.* v. *Benedict*, 229 U. S. 481; *Ohio Tax Cases*, 232 U. S. 567, 587; *Farncomb* v. *Denver*, 252 U. S. 7.

The bill fails, also for another reason, to state a case entitling plaintiff to relief. Before the suit was begun it had been decided that the taxing statute was valid, that the property was subject to taxation, that it was assessable as real estate, and that the assessment should be made, as

was done, by the county assessor and not by the State Board of Equalization. The amount of the tax payable was, therefore, the only matter in controversy. Under such circumstances a plaintiff seeking an injunction must aver payment or tender of the amount of taxes confessedly due, or at least offer to pay such amount as the court may find to be justly and equitably due. *People's National Bank* v. *Marye*, 191 U. S. 272; *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 38. The bill contains no such allegation.

Decree affirmed.